

Regulation 4**Special Requirements for Disposal of Garbage**

(1) Subject to the provisions of paragraph (2) of this Regulation, the disposal of any materials regulated by this annex is prohibited from fixed or floating platforms engaged in the exploration, exploitation and associated offshore processing of seabed mineral resources, and from all other ships when alongside or within 500 metres of such platforms.

(2) The disposal into the sea of food wastes may be permitted when they have been passed through a comminuter or grinder from such fixed or floating platforms located more than 12 nautical miles from land and all other ships when alongside or within 500 metres of such platforms. Such comminuted or ground food waste shall be capable of passing through a screen with openings no greater than 25 millimetres.

Regulation 5**Disposal of Garbage within Special Areas**

(1) For the purposes of this Annex the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area and the "Gulfs area" which are defined as follows:

(a) The Mediterranean Sea area means the Mediterranean Sea proper including the gulfs and seas therein with the boundary between the Mediterranean and the Black Sea constituted by the 41° N. parallel and bounded to the west by the Straits of Gibraltar at the meridian of 5°36' W.

(b) The Baltic Sea area means the Baltic Sea proper with the Gulf of Bothnia and the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57°44.8' N.

(c) The Black Sea area means the Black Sea proper with the boundary between the Mediterranean and the

Black Sea constituted by the parallel 41° N.

(d) The Red Sea area means the Red Sea proper including the Gulfs of Suez and Aqaba bounded at the south by the rhumb line between Ras si Ane (12°8.5' N., 43°19.6' E.) and Husn Murad (12°40.4' N., 43°30.2' E.).

(e) The "Gulfs area" means the sea area located northwest of the rhumb line between Ras al Hadd (22°30' N., 59°48' E.) and Ras al Fasteh (25°04' N., 61°25' E.).

(2) Subject to the provisions of Regulation 6 of this Annex:

(a) Disposal into the sea of the following is prohibited:

(i) All plastics, including but not limited to synthetic ropes, synthetic fishing nets and plastic garbage bags; and

(ii) All other garbage, including paper products, rags, glass, metal, bottles, crockery, dunnage, lining and packing materials;

(b) Disposal into the sea of food wastes shall be made as far as practicable from land, but in any case not less than 12 nautical miles from the nearest land.

(3) When the garbage is mixed with other discharges having different disposal or discharge requirements the more stringent requirements shall apply.

(4) Reception facilities within special areas:

(a) The Government of each Party to the Convention, the coastline of which borders a special area undertakes to ensure that as soon as possible in all ports within a special area, adequate reception facilities are provided in accordance with Regulation 7 of this Annex, taking into account the special needs of ships operating in these areas.

(b) The Government of each Party concerned shall notify the Organization of the measures taken pursuant to subparagraph (a) of this Regulation. Upon receipt of sufficient notifications the Organization shall establish a date

from which the requirements of this Regulation in respect of the area in question shall take effect. The Organization shall notify all Parties of the date so established no less than twelve months in advance of that date.

(c) After the date so established, ships calling also at ports in these special areas where such facilities are not yet available, shall fully comply with the requirements of this Regulation.

Regulation 6**Exceptions**

Regulations 3, 4 and 5 of this Annex shall not apply to:

(a) The disposal of garbage from a ship necessary for the purpose of securing the safety of a ship and those on board or saving life at sea; or

(b) The escape of garbage resulting from damage to a ship or its equipment provided all reasonable precautions have been taken before and after the occurrence of the damage, for the purpose of preventing or minimizing the escape; or

(c) The accidental loss of synthetic fishing nets or synthetic material incidental to the repair of such nets, provided that all reasonable precautions have been taken to prevent such loss.

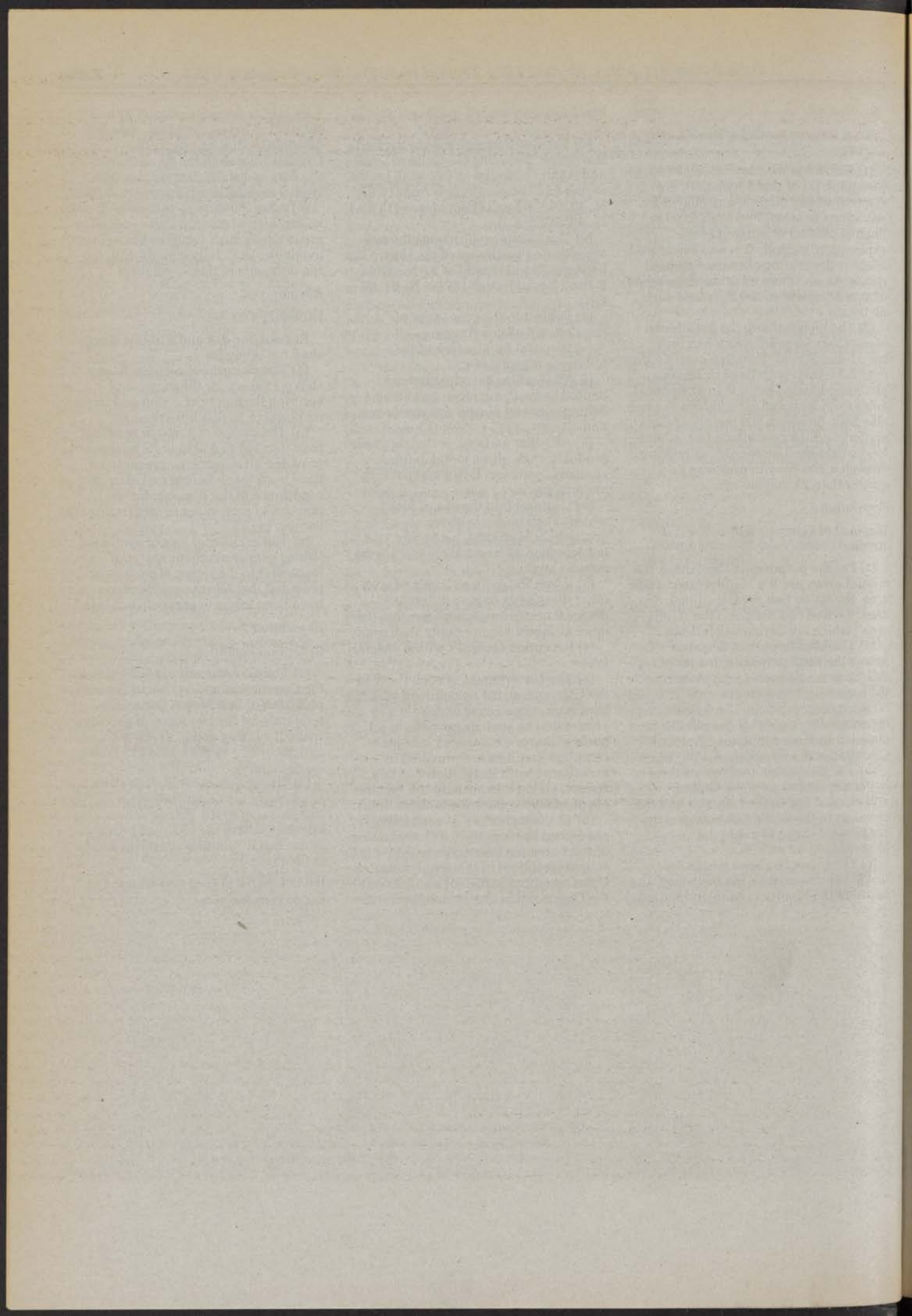
Regulation 7**Reception Facilities**

(1) The Government of each Party to the Convention undertakes to ensure the provision of facilities at ports and terminals for the reception of garbage, without causing undue delay to ships, and according to the needs of the ships using them.

(2) The Government of each Party shall notify the Organization for transmission to the Parties concerned of all cases where the facilities provided under this Regulation are alleged to be inadequate.

[FR Doc. 88-14143 Filed 6-23-88; 8:45 am]

BILLING CODE 4910-14-M



Friday
June 24, 1988

Part V

Department of Housing and Urban Development

24 CFR Parts 840 and 841
Supportive Housing Demonstration
Program; Rule and Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 840 and 841

[Docket No. R-88-1356; FR-2385]

Supportive Housing Demonstration Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Supportive Housing Demonstration Program is contained in Subtitle C of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987). This program provides assistance for projects providing housing and supportive services for homeless persons in the forms of transitional housing to facilitate the movement of homeless individuals to independent living, and permanent housing for handicapped homeless persons. This notice announces the final rules for the program.

EFFECTIVE DATE: This rule is effective September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Bourne, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-5730. Hearing or speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These phone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

The Transitional Housing Demonstration Program was first included in the Homeless Housing Act of 1986 (Part B of Title V of HUD's regular appropriation for fiscal year 1987).¹ On July 22, 1987, the President approved the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100-77 ("McKinney Act"). Title IV of the McKinney Act contains a number of housing assistance provisions to be administered by HUD. Subtitle C of Title IV authorizes the Supportive Housing Demonstration Program (SHDP). Under SHDP, HUD is directed to carry out a program to develop innovative

approaches to providing housing and supportive services to the homeless. The program has two components—a reauthorization (with amendments) of the Transitional Housing Demonstration Program and a new program of permanent housing for handicapped homeless persons.

On October 28, 1987 (52 FR 39946), HUD published a proposed rule implementing SHDP. In response to the request for public comments, HUD received nine comments. The nine commenters included: two public housing authorities (PHAs), four State or city agencies or departments, a mental health association, a consortium of citizens with developmental disabilities, and a state association of housing and redevelopment organizations.

II. Final Rule

A. Overview

The major features of SHDP and public comments are discussed below.

1. *Transitional Housing.* Part 840 of the final rule governs the transitional housing component of the program. Transitional housing is defined as an assisted project that provides housing and supportive services to homeless persons and that has as its purpose facilitating the movement of homeless individuals to independent living within a reasonable amount of time, not to exceed 18 months.

(a) *Applicants and recipients.* In accordance with section 422(1) of the McKinney Act, the proposed rule limited eligible applicants under the transitional housing program to States, metropolitan cities, urban counties, tribes, and private nonprofit organizations. "Applicant" also included two or more of these entities that submit a joint application.

The universe of eligible governmental applicants under the McKinney Act is more restrictive than that provided under the THDP guidelines. The THDP guidelines included all governmental entities, including those that have general governmental powers (such as cities, counties, or States), as well as those that have limited or special powers (such as public housing agencies). In the proposed rule, HUD expressed its concern that the definition of "applicant" may exclude many units of local government with a long-term commitment to serving the needs of the homeless. Because the statutory definition in the McKinney Act authorized the provision of direct assistance only to States, metropolitan cities, urban counties and private nonprofit organizations, the preamble to the proposed rule stated that HUD was considering the addition of express

regulatory language permitting eligible governmental recipients to contract with other governmental entities to operate transitional housing assisted under the program. The preamble also stated that HUD might extend this contracting to other types of entities. Public comment was expressly requested on this issue. Two commenters addressed this issue. Both urged HUD to expand the universe of eligible applicants to include such entities as PHAs and rural counties.

Following the issuance of the proposed rule, President Reagan signed the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Section 570 of this Act revises the definition of "applicant" under section 421(1) of the McKinney Act to add "governmental entities". Accordingly, the final rule will define "applicant" to include "a State, metropolitan city, urban county, governmental entity, tribe, or private nonprofit organization that submits an application for assistance under this part." Governmental entities will include those that have general governmental powers (such as a city or county), as well as those that have limited or special purpose powers (such as PHAs). Additional revisions have been made throughout the part to reflect this change. (E.g. Requirements for CHAP certification for such applicants have been added. The revisions reflect requirements contained in the Transitional Housing Demonstration Program Notice of Fund Availability, published September 3, 1987 (52 FR 33536).)

One commenter argued that the final rule should also be revised to require or permit recipients to contract with governmental entities that have limited or special purpose powers (such as PHAs), to provide or coordinate the provision of supportive services and to operate transitional housing under the program.

The proposed revisions have not been incorporated in the final rule. Initially, we note that the McKinney Act does not permit recipients to contract with other entities for the operation of the supportive housing project. This conclusion is based on several provisions of the McKinney Act including section 424(c)(1) which requires the applicant to agree to operate the proposed project and section 424(b)(1) which provides that the selection criteria must consider the ability of the applicant to develop and operate the supportive housing.

The McKinney Act, on the other hand, clearly recognizes that many recipients may not be able to directly provide all

¹ Section 101(g), Pub. L. 99-500 (approved October 18, 1986) and Pub. L. 99-591 (approved October 30, 1986) making appropriations as provided for in Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

supportive services required by the residents of the supportive housing. Accordingly, the definition of supportive housing (section 422(12)) provides that all or part of the supportive services provided in connection with supportive housing may be provided directly by the recipient or by arrangement with other public or private service providers. Rather than require recipients to contract with limited or special purpose governmental entities for supportive services, HUD believes that the purposes of the program would best be served if applicants are permitted to seek out such services from all available sources. The final rule is unchanged on this point.

The proposed rule at §§ 840.120(e)(3)(B) and 841.125(e)(3)(B) permits a recipient that is a wholly secular organization established by a pervasively sectarian organization to enter into a management contract with the pervasively sectarian organization to operate the facility, including the provision of supportive services. In light of the discussion above regarding contracts for project operations, the final rule limits such contracts to the provision of supportive services.

(b) *Eligible participants.* Transitional housing under the proposed rule must serve homeless persons. The term "homeless person" is defined in section 103 of the McKinney Act. The final rule reflects this statutory definition, with clarifying language indicating that the term includes homeless families.

The McKinney Act emphasizes that various homeless populations are to be served by transitional housing. These include deinstitutionalized homeless individuals and other homeless individuals with mental disabilities, and homeless families with children. (See sections 422(12)(A) and 428(b)(1) of the McKinney Act). In order to implement these statutory provisions, § 840.5 of the proposed rule defined handicapped (and handicapped person), homeless individual with mental disabilities, deinstitutionalized homeless individual, and homeless family with children.

HUD has reconsidered the proposed definition of homeless family with children. Proposed § 840.5 defined homeless family with children as a homeless family that includes at least one parent and one child under the age of 18. The proposed rule would have excluded families that have more distant relationships such as an aunt or uncle caring for a niece or nephew, and would have excluded a guardian and a child. To remedy this problem the final rule adopts the definition of homeless family contained in the SHDP Notice of Funds Availability published February 16, 1988

(53 FR 4458). This NOFA defined homeless family with children as a homeless family consisting of at least one parent or guardian, and one child under the age of 18. The change has been incorporated at § 840.5 of the final rule.

2. *Permanent housing.* The final rule at Part 841 governs permanent housing for handicapped homeless persons. Permanent housing for handicapped homeless persons is defined as a project that provides community-based, long-term housing and supportive services for not more than eight handicapped homeless persons, and that is carried out by a project sponsor.

(a) *Number of residents.* One commenter suggested that HUD increase the number of handicapped homeless persons that may be served under the permanent housing program from eight to 12. HUD is statutorily prohibited under section 422(12)(B) of the McKinney Act from expanding the number of handicapped homeless persons that may be served in a project beyond eight.

(b) *Applicants, recipients and project sponsors.* Under Part 841, the applicant for permanent housing must be the State in which the project is to be located and the project sponsor must be a private nonprofit organization that will operate a project for permanent housing for handicapped homeless persons.

One commenter suggested that the regulations be revised to permit governmental entities to participate as project sponsors. This revision is not permitted under the McKinney Act. Section 422(8) defines project sponsor as a private nonprofit organization that is approved by the Governor or chief executive official of a State as to financial responsibility.

Alternatively, this commenter suggested that the regulations should be revised to require or permit applicants and project sponsors to contract with governmental entities to operate and provide or coordinate the provision of supportive services under the programs. For the reasons stated in section IIA.1.(a) above, the proposed revision has not been incorporated in the final rule.

(c) *Program participants.* While transitional housing projects may serve any individual or family meeting the definition of homeless individual, permanent housing is limited to projects that serve handicapped homeless persons. In accordance with section 422(3) of the McKinney Act, § 841.5 of the final rule provides that handicapped homeless person means a handicapped person who: (a) is a homeless individual; (b) who is currently not a homeless

individual but who is at risk of becoming a homeless individual; or (c) has been a resident of a transitional housing project assisted under the THDP guidelines.

One commenter applauded the fact that the proposed rule addressed the needs of handicapped persons who are at risk of becoming homeless. This commenter suggested that a section in the final rule should be developed to specifically address the needs of these persons. HUD believes that the final rules sufficiently address the needs of all segments of the homeless population that are eligible for admission to supportive housing. Since the commenter did not make any specific recommendations concerning the contents of such a section, the final rule is unchanged on this point.

B. Assistance provided under the programs.

1. *Types of assistance.* Assistance available under the transitional housing and permanent housing programs include: (1) Advances to cover the costs of acquisition, substantial rehabilitation, or acquisition and rehabilitation of existing structures, (2) grants for moderate rehabilitation, (3) funding for operating costs (available for transitional housing only), and (4) technical assistance.

Two commenters argued that HUD should offer operating costs assistance for permanent housing because residential supervision and professional support for persons with chronic mental illness is necessary for the maintenance of an independent living situation. Under section 423(a)(2), HUD is authorized to provide annual payments only for operating costs of transitional housing. The statute does not authorize these payments for permanent housing. This change has not been incorporated in the final rule. (A related clarifying amendment has been made to § 841.120(a)(1) to reflect the fact that funding is not available for operating costs for permanent housing.)

Proposed § 841.100(b) stated "applicants may be eligible for either an acquisition/rehabilitation advance or a moderate rehabilitation grant, but not both." This section has been clarified in the final rule. As drafted, proposed rule might limit each State to one acquisition/rehabilitation advance or one moderate rehabilitation grant, even though the State may have made several applications for different permanent housing projects. This section has been clarified to state that the limitation applies to each project assisted under Part 841.

2. *Matching requirements.* Section 425 of the McKinney Act addresses matching funds requirements for SHDP. The McKinney Act imposes substantially different matching requirements for transitional housing and permanent housing.

Section 425(a) of the McKinney Act requires *transitional housing* recipients to match the acquisition/rehabilitation advance and the moderate rehabilitation grant with an equal amount of funds from sources other than SHDP. Section 423(a) authorizes annual payments for operating costs of transitional housing which may not exceed 75 percent of the costs of such housing. The proposed rule imposed a 50 percent limitation on the amount of the annual payments for transitional housing operating costs.

One commenter argued that the 50 percent limitation on annual payments for transitional housing operating costs places an undue hardship on applicants that have worthwhile projects, but who experience difficulties in raising the required matching funds. The commenter suggested that HUD increase the percentage of operating cost funding to 75 percent.

Section 423(a) provides that the payment for annual operating costs is not to exceed 75 percent of the annual operating costs of the housing. Despite the inclusion of a similar requirement in the THDP guidelines, HUD has found no expression of congressional intent to support the contention that HUD does not or should not have discretion to set the maximum amount of Federal assistance within the outer limit specified by the statute. HUD believes that the 50 percent matching requirement is necessary to ensure the recipient's commitment to the provision of transitional housing and to ensure that the most effective use is made of the funds available for the program. This requirement has been retained in the final rule.

Proposed § 840.130(c) implemented section 425(a) of the McKinney Act and permitted the inclusion of certain types of "in kind" contributions in the computation of the match for transitional housing assistance. For example, such items as the value of any donated material or building, and the value of any lease on a building may be included in the transitional housing assistance match. One commenter suggested that the sections covering "in kind" contributions should be expanded to include "technical assistance" provided to recipients, such as architectural renderings and professional guidance concerning adherence to rehabilitation

requirements and compliance with local codes.

Except for contributions cited in section 425(a) of the statute, the final rule excludes "in kind" contributions from the matching computation. The Department continues to believe that the match required for transitional housing should generally be a "hard match" (i.e. the matching contributions should come from funds made available from the applicant or from other sources). This conclusion is based on HUD's belief that such contributions are better indicators of the likelihood of success of the project and avoids the problems related to the valuation of "in kind" contributions. (For a more extensive discussion of these valuation difficulties, see 52 FR 21743 at 21748.)

Some confusion has been expressed concerning the calculation of the acquisition/rehabilitation advance where the fair market value of a building is used as part of the applicant's match. If the applicant currently owns or has been donated ownership of a building for proposed transitional housing, the fair market value of the building, supported by an appraisal prepared by a qualified real estate appraiser, may be used to match HUD funds. The following examples are provided to clarify this area:

Example 1:

Total Costs: \$100,000 = Cost of Rehabilitation
Applicant's Matching Sources:
\$100,000 = Fair Market Value of Building

The applicant is eligible for a maximum advance of \$100,000 from HUD because the applicant has provided the fair market value which is equal to the cost of rehabilitation.

Example 2:

Total Costs: \$100,000 = Cost of Rehabilitation
Applicant's Matching Sources:
\$65,000 = Fair Market Value of Building
0 = Other Funds Committed

In this example, the applicant has provided \$65,000 in matching sources by using the fair market value of the building. The applicant wishes to receive a HUD advance equal to the match of \$65,000. However, with the exception of the \$65,000 fair market value used as a match for HUD funds, the applicant has not committed any other funds as matching sources to demonstrate the feasibility of financing the \$100,000 of rehabilitation work. In other words, the applicant is \$35,000 short of meeting the cost of rehabilitation. Therefore, the project would fail the threshold review due to

proposal infeasibility and HUD would not award an advance.

Example 3:

Total Costs: \$100,000 = Cost of Rehabilitation
Applicant's Matching Sources:
\$65,000 = Fair Market Value of Building
\$35,000 = Other funds committed

In this example, the applicant has corrected the problem shown in (2) above. HUD, therefore, will match the fair market value of \$65,000 since the applicant also has provided \$35,000 in funds committed toward covering the remaining cost of rehabilitation. Therefore, the applicant is eligible for a maximum advance equal to the appraised fair market value of the owned/donated structure if a firm commitment of funds from the applicant is provided to cover the remaining cost of rehabilitation.

Proposed § 840.130(f) excluded funds provided under federally assisted programs from the matching computation for *transitional housing*, except for funds made available under HUD's Community Development Block Grants Program. Similarly, the proposed matching requirements for the *permanent housing* program (§ 841.125) required recipients to match the assistance provided by HUD with at least an equal amount of State or local government funds. One commenter argued that applicants should be permitted to count contributions of the federal share of public assistance funds as a part of the match.

HUD is statutorily precluded under section 425(b) from including the cited funds in the applicant's contribution under the *permanent housing* program. While it may be statutorily permissible to consider such funding in the match for transitional housing projects, the final regulations are unchanged on this point. As noted in the final THDP guidelines (52 FR 21743) at 21749, HUD continues to believe that these requirements are necessary to measure the commitment of the applicant, the State and local governments, and other private sources to the development and operation of successful programs of the homeless, and to ensure that the matching requirements do not become a mere exercise in "grantsmanship".

3. *Limitations on the use of assistance.* Proposed §§ 840.125 (transitional housing) and 841.120 (permanent housing) incorporated various limitations on the use of assistance. Commenters addressed proposed limitations governing leased

property and limitations on administrative costs.

(a) *Leased property.* Under proposed §§ 840.125(c) and 841.120(c), acquisition/rehabilitation advances and moderate rehabilitation grants would be available for the rehabilitation of leased property. To receive an acquisition/rehabilitation advance or a moderate rehabilitation grant, the lease must run for a term of at least 10 years after the date of initial occupancy of the building.

Two commenters argued that the minimum lease term severely limits the number of rental properties available for use under the program. These commenters argued that few rental property owners would be willing to negotiate such long-term leases. Commenters recommended that one-year leases be authorized for the program so that greater freedom of mobility and housing choices may be provided.

The regulations require that all projects must be operated as supportive housing for a term of at least 10 years from the date of initial occupancy. This 10-year minimum operating requirement is reflected in the final regulations at §§ 840.205(b)(6), 840.305(d), 840.310(a), 841.205(b)(6), 841.305(d), and 841.310(a). The requirements for a 10-year lease were imposed to provide adequate assurance that the project will be operated for at least the required 10-year period and have been retained in the final rule.

As proposed, § 840.125(c) would require a 10-year lease only if a transitional housing assistance recipient receives an acquisition/rehabilitation advance or a moderate rehabilitation grant. Since the 10-year operation requirement is applicable to all transitional housing recipients including those that receive only operating costs assistance, § 840.125(c) of the final rule has been revised to apply the 10-year lease requirement to all transitional housing projects that are leased by a recipient.

The phrase "date of initial occupancy" is used throughout the proposed regulation to indicate when the 10-year period will begin. For the purposes of clarity, the definition of this phrase that is contained in §§ 840.310(d) and 841.310(d) of the proposed rule has been moved to the definition sections (§§ 840.5 and 841.5) and conforming changes have been made throughout the rule.

(b) *Administrative costs.* Proposed §§ 840.125(g) and 841.120(g) would prohibit recipients from using more than five percent of an advance or a grant for administrative purposes. One commenter urged HUD to eliminate this

five percent limitation on the use of funding for administrative costs.

Section 426 of the McKinney Act specifically provides that no recipient may use more than five percent of an advance or grant received under the program for administrative purposes. Accordingly, HUD has not made the requested change.

4. *Assistance under other HUD programs.* Several commenters urged HUD to provide Housing Vouchers under Section 8(o) of the United States Housing Act of 1937 to eligible persons upon their departure from transitional housing. Commenters argued that Vouchers will provide a wider range of housing options to individuals leaving transitional or permanent housing. Two commenters noted that the provision of Vouchers is critical to the success of the transitional housing program in particular, since the failure to provide access to permanent housing would undermine the purpose of this SHDP component. One commenter suggested that, at a minimum, very low income graduates of transitional housing should be given a preference for Vouchers.

The THDP guidelines indicated that HUD would provide Housing Vouchers to eligible persons upon their departure from transitional housing. Following the issuance of the THDP guidelines, the size of the program increased dramatically. The original appropriation for the transitional housing demonstration program was \$5 million. The appropriation for SHDP in the Supplemental Appropriations Act, 1987 was increased to \$80 million (including \$65 million for transitional housing and \$15 million for permanent housing). Recently, the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (Pub. L. 100-202, approved December 22, 1987) appropriated an additional \$65 million for SHDP. (\$15 million of this amount was for permanent housing and \$50 million was for transitional housing.) Funding for Vouchers, by contrast, has remained relatively constant. Due to the increased size of SHDP and the limited resources available for Vouchers, the rule has not been amended. The final rule, however, does not preclude a PHA from providing Vouchers under such circumstances, consistent with the final rule on preference in the provision of housing for families who are occupying substandard housing, involuntarily displaced, or paying more than 50 percent of family income for rent. (The final rule on these preferences was published January 15, 1988, 53 FR 1122).

Under the preference rule, a "homeless individual or family" is considered to be a family occupying

substandard housing. The definition of "homeless individual or family" in the preference rule is the same as that found in the McKinney Act. Under this definition, residents of transitional housing for the mentally ill are considered to be homeless and thus occupy substandard housing under the preference rule.

C. Selection process

1. *Procedures.* The proposed rules for transitional and permanent housing included similar four-stage selection procedures. The four stages were: (1) threshold—HUD would review all applications to determine if they fulfill certain threshold criteria; (2) ranking—HUD would evaluate applications that meet the threshold criteria and place these applications in priority order based on stated ranking criteria; (3) environmental review—HUD would perform a review on a number of highly ranked applications in accordance with the National Environmental Policy Act and HUD's environmental regulations at 24 CFR Part 50; and (4) final selection—HUD would select for funding the highest rated applications that advance from the environmental review (with any rating adjustments), but would serve the right to fund other applications that successfully completed the environmental review, if such funding is necessary to ensure reasonable diversity in the demonstration.

HUD has completed two funding rounds using the four-step procedure and has committed approximately \$60 million in funds to recipients for transitional housing. Based on this experience, HUD has decided to revise the four-stage selection process.

As described above, the proposed rule provided for environmental review of highly ranked applications during stage three of the selection process. The final rule revises the selection procedures to permit HUD to perform environmental reviews on all applications during the threshold review (stage one). As noted in the SHDP Notice of Funds Availability published on February 16, 1988 (53 FR 4458), HUD believes that this change will provide a more reasonable and adequate time to perform environmental reviews.

2. *Threshold stage.* The proposed rules provided that HUD would review six factors during the threshold review. The six factors were substantially the same for both transitional and permanent housing. The factors included the review of the following: (1) the form, time and adequacy of the application; (2) the eligibility, financial responsibility, capacity and legal

authority of applicant (and, for the permanent housing program, the project sponsor); (3) compliance with matching requirements; (4) compliance with requirements regarding the proposed housing and supportive services; (5) the provision of a maintenance of effort certification; and (6) overall project feasibility. HUD received comments on the following threshold requirements:

(a) *Legal authority of applicant and project sponsor.* Proposed §§ 840.210(b)(2)(iv)(B) and 841.210(b)(2)(iv)(B) required the applicant (and, for permanent housing, the project sponsor) to certify that a resolution, motion, or similar action was duly adopted or passed as an official act by the governing body of the applicant (and the project sponsor) authorizing the submission of the application for supportive housing.

Two commenters objected to this requirement. Commenters noted that while this requirement may be appropriate for applicants that are private nonprofit organizations, many governmental entities are empowered under State and local laws to carry out program activities without obtaining the approval of their governing body.

HUD agrees that the cited requirement may be overly restrictive when applied to governmental agencies. Accordingly, HUD has amended this provision to require governmental applicants to either: (1) certify that a resolution, motion, or similar action was duly adopted or passed as an official act by the governing body of the applicant, or (2) certify, and provide appropriate supporting documentation, that the applicant is empowered under State and local laws to carry out program activities without obtaining approval of the governing body.

HUD included this requirement in the THDP guidelines based on provisions in OMB Circular No. A-102, Uniform Requirements for Assistance to State and Local Governments, Attachment M. Recently, OMB revised OMB Circular No. A-102 and issued Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Regulation). On March 11, 1988 (53 FR 8034), HUD added a new part 85 which incorporated these common regulations. Part 85 does not require agencies to use OMB's pre-approved standard forms. Instead, departments may use forms approved by OMB under the Paperwork Reduction Act of 1980. The revised requirements for governing board approval are contained in forms that have received such approval.

(b) *Proposed housing and supportive services.* Sections 840.210(b)(4) and

841.210(b)(4) of the proposed rule contained threshold requirements addressing the proposed housing and supportive services. These sections addressed such matters as: the need for the proposed housing; the adequacy of the proposed housing and supportive services; siting, zoning and floodplain requirements; consistency with government plans; and the displacement certification. Commenters addressed the following issues.

(1) *Supportive services.* Proposed § 841.210(b)(4)(ii) provided that each applicant for permanent housing assistance must demonstrate that the proposed supportive services appropriately addressed the needs of the handicapped homeless population to be served. This subparagraph listed the factors that HUD would use in determining the adequacy of the supportive services; required applicants to provide a letter of commitment if public or private organizations (other than the applicant or the project sponsor) would provide supportive services; and required applicants to designate certain State agencies with responsibilities related to the provision of services to the handicapped.

One commenter argued that this section should be revised. The commenter noted that section 424(a)(2)(F)(i) of the McKinney Act gives the State the responsibility for determining the appropriateness of proposed supportive services under the permanent housing component of SHDP. This section requires applicants to submit "a letter of participation from the Governor or other chief executive official of the State assuring that the State * * * will facilitate the provision of necessary supportive services to the residents of the project."

HUD agrees with the commenter. The final rule at § 841.210(b)(4)(ii) has been revised to delete the requirement that the applicant demonstrate that the proposed supportive services are appropriate and deletes the factors that HUD would use in determining the adequacy of the services. The remaining requirements proposed in this section have been retained.

(2) *Site control, zoning, and flood plains.* The proposed rules required all applicants: (A) to demonstrate site control; (B) to demonstrate that that proposed use of the site is permissible under applicable zoning ordinances and regulations (or provide a statement describing the proposed actions necessary to make the use of the site permissible under such ordinances and regulations); and (C) to submit a statement that the proposed project is not located in any 100-year floodplain as

designated by maps prepared by the Federal Emergency Management Agency (FEMA), and, if 50 percent or more of the living space in the structure is designed for residents with mobility impairments, submit a statement that the proposed project is not located in any 500-year floodplain, as designated on FEMA maps. (See §§ 840.210(b)(4)(iv) and 841.210(b)(4)(v).)

Two commenters argued that the proposed requirements frustrate the intent of the program by making it too difficult for applicants to locate and develop housing for homeless persons. (E.g. Commenters noted that in some communities, the floodplain requirements automatically prohibit the development of urgently needed housing.) Commenters suggested the elimination of these requirements or the amendment of the requirements to make them less rigorous. For example, commenters suggested that these requirements be simplified to merely require conformance with State and local laws.

The final rule retains the site control, zoning and floodplain requirements. HUD continues to believe that these requirements are necessary to ensure that supportive housing is established, and intended beneficiaries are assisted, as expeditiously as possible. Past experience demonstrates that delays associated with obtaining control of a site, proper zoning approvals and floodplain compliance can be extensive and, in the case of zoning and floodplain requirements, that local opposition can often result in the discontinuation of development.

It is true that some otherwise meritorious applicants, despite diligent efforts, may be excluded by the site control, zoning and floodplain requirements. However, HUD does not believe that these disadvantages outweigh the need for expeditious provision of SHDP assistance.

It should be noted that HUD has attempted to relax these requirements where possible. For example, during the development of the proposed rules for SHDP, HUD reexamined the site control, zoning and floodplain requirements imposed under the final THDP guidelines. As a result, the zoning requirements were substantially modified to permit applicants to demonstrate that they have a reasonable basis to believe that zoning actions will be completed successfully within four months following the submission of the application. Additionally, the proposed and final rules provide that HUD will not immediately reject applications that fail

to comply with the site control and zoning requirements at the time of the application. (This provision also applies to matching requirements.) Rather, if these deficiencies are the only deficiencies in the application, HUD will assist such applicants in correcting the applications. (See §§ 840.210(a) and 841.210(a).)

The final rule makes one minor clarification of the floodplain requirements. The final rule specifically states that HUD will not assist an applicant under §§ 840.210(a) and 841.210(a), if the applicant fails to include required flood plain statements with the application. Such applications will not be eligible for assistance.

(3) *Displacement.* Proposed §§ 840.210(b)(4)(vi) and 841.210(b)(4)(vii) required each applicant to certify that its proposed activities would not result in the displacement of any person or entity. HUD continues to believe that a program designed to serve the homeless should not cause displacement that could create more homelessness. Further, HUD is concerned that the failure to restrict displacement may dilute the limited funds available to implement the program, since actions causing residential and non-residential displacement may create obligations for relocation payments from program funds under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655). HUD is also concerned, however, that the proposed displacement prohibition is too restrictive.

Accordingly, HUD has reconsidered the displacement requirement. The final rule retains the requirement that each applicant must certify that its proposed activities will not result in the displacement of any person or entity and provides that HUD will not fund applications that will cause any individual, family, partnership, corporation, or association to move from real property or to move its personal property from real property because of an actual or impending acquisition or rehabilitation, in whole or in part, for a project. The final rule, however, clarifies that prohibited displacement does not include: (1) a move by a residential tenant-occupant to a suitable dwelling unit within the same building or within the same site, provided that all out-of-pocket expenses related to the move are reimbursed by the recipient; or (2) a move by an owner-occupant who voluntarily sells his or her property after being informed in writing by the applicant that the applicant will not acquire the property if a mutually

satisfactory agreement of sale cannot be reached. In such a case, however, moves by tenant-occupants (other than the owner) may constitute prohibited displacement. (For further information on such owner-occupant sales, see 24 Part 42 Appendix A, 24 CFR § 42.101(a).)

The types of moves that have been excluded under the final rule do not constitute displacement that would create the obligation for payments under the URA or under the recently enacted revisions to the URA (Title IV, Uniform Relocation Act Amendments of 1987, of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17, enacted April 2, 1987)). These amendments expand URA displacement coverage and must be effective by April 2, 1989. HUD, with the Department of Transportation as the lead agency, is participating in the preparation of government-wide URA regulations that will supersede the individual agency's regulations. Following the issuance of the final government-wide URA rules, HUD may reconsider the definition of displacement under this threshold criterion.

3. *Ranking stage.* The criteria for the ranking of applications are set forth in §§ 840.215 and 841.215. These criteria are unchanged in the final rule except for a minor clarifying revision to the cost effectiveness criterion at §§ 840.215(b)(5) and 841.215(b)(4).

D. Program requirements

Subpart E of Parts 840 and 841 address program requirements. These subparts address the grant agreement, the required agreements, the term of the commitment to HUD, the repayment of the advance, the prevention of undue benefits, resident rent, the applicability of other Federal requirements and other matters.

Proposed §§ 840.300(b) and 841.300(b) provided that restrictions regarding the use of structures would be included in covenants recorded in the land records of the jurisdictions in which the structure is located. The final rule deletes recordation requirements for structures for transitional housing projects that only receive funding for operating costs. The main purpose of the recordation requirement was to ensure that certain statutory requirements applicable to acquisition/rehabilitation advances and moderate rehabilitation grants could be enforced (see e.g., requirements for the repayment of advances and the prevention of undue benefits). The final rule also deletes recordation requirements for structures that are owned by governmental entities. HUD believes that it can satisfactorily enforce these statutory

requirements against governmental entities without such covenants.

Commenters raised the following issues:

1. *Resident selection.* One commenter recommended that HUD should permit certain individuals to reside in supportive housing while their eligibility for admission is determined. The procedures for the determination of resident eligibility and other matters dealing with the day-to-day operation and management of the project should be left to the recipient's discretion. Accordingly, the proposed change has not been incorporated in the final rule.

2. *Resident rent.* Proposed §§ 840.320 and 841.320 provided that each homeless individual residing in supportive housing must pay rent in an amount determined in accordance with section 3(a) of the United States Housing Act of 1937. One commenter noted that State regulations governing the use of funds under certain State programs prohibit the collection of resident rent. The commenter suggested that HUD's resident rent provisions be modified to permit recipients and project sponsors some flexibility with rental charges.

This revision has not been made. The cited regulations implement section 424(d) of the McKinney Act which require the described rental payments.

3. *Other program requirements.* The proposed regulations at §§ 840.330 and 841.330 described the applicability of other Federal requirements.

(a) *Nondiscrimination provisions.* The nondiscrimination and equal opportunity requirements that apply to the program are discussed at §§ 840.330(a) and 841.330(a). Paragraph (a)(6) of these sections provide that if the procedures that the recipient intends to use to make known the availability of the supportive housing are unlikely to reach persons of any particular race, color, religion, sex, age, or national origin who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that these persons are made aware of the availability of supportive housing opportunities. The final rule modifies this section by adding "handicap" to the listing.

(b) *OMB Circular No. 102.* Proposed §§ 840.330 (c) and (e) and 841.330 (c) and (e) contained references to the requirements of OMB Circular No. A-102. In a final rule published March 11, 1988 (53 FR 8034), HUD adopted a new Part 85 implementing OMB Circular A-102 and the uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments. The

final SHDP rule has been revised to refer to part 85 and to specifically identify provisions of Part 85 that are wholly or partially inapplicable to the program.

(c) *Lead-based paint.* Provisions implementing the Lead-Based Paint Poisoning Prevention Act were included in the proposed rules at §§ 840.330(d) and 841.330(d). These provisions reflected the Section 8 Existing Housing regulations and the lead-based paint requirements contained in the THDP guidelines.

Section 566 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) significantly changed the lead-based paint requirements. On April 5, 1988 (53 FR 11164), HUD published proposed rules making appropriate revisions to various programs regulations. Because the SHDP regulations were not final when the proposed lead-based paint rule was published, the text of the lead-based paint rule did not include amendments for SHDP. The preamble to the proposed lead-based paint rule, however, stated that HUD would modify the lead-based paint requirements for SHDP to reflect the changes made to the Section 8 Existing Housing regulations. The Department stated that the changes would be made in the final lead-based paint rule or in the final SHDP rule, depending on the status of these rules on the date that the final lead-based paint rule is published. On June 6, 1988, HUD published its final lead-based paint rules. Accordingly, the lead-based paint requirements contained in this final SHDP rule have been revised to reflect the June 6, 1988 lead-based paint requirements for Section 8 Existing Housing.

Other miscellaneous changes have been made to the text of the rule for clarity and for editorial purposes.

III. Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on

February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Only a limited number of small entities will be eligible for and affected by this program because: (1) the current funding level will support only a limited number of recipients; and (2) recipients under the program include small and large private nonprofit organizations and government entities.

This rule was listed as item 930 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.178.

The information collection requirements contained in Part 840 of this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501-3520). The OMB control number is 2502-0361. The information collection requirements contained in Part 841 of this rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. No person may be subjected to penalty for failure to comply with the information collection requirements contained in Part 841 until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the Federal Register.

List of Subjects

24 CFR Part 840

Grant programs, Housing and community development, Housing, Homeless.

24 CFR Part 841

Grant programs, Housing and community development, Housing, Handicapped, Homeless.

For the reasons set forth in the preamble, Title 24 of the Code of Federal Regulations, is amended as follows:

1. Part 840 is added to read as follows:

PART 840—TRANSITIONAL HOUSING

Subpart A—General

Sec.

840.1 Availability and scope.

840.5 Definitions.

Subpart B—Assistance Provided

840.100 Types of assistance.

840.105 Acquisition/rehabilitation advances.

840.110 Moderate rehabilitation grants.

840.115 Funding for annual operating costs.

840.120 Technical assistance.

840.125 Limitations on use of assistance.

840.130 Matching requirements.

840.135 Assistance under other HUD programs.

Subpart C—Comprehensive Homeless Assistance Plan

840.150 Comprehensive Homeless Assistance Plan.

Subpart D—Application and Selection Process

840.200 Notice of fund availability.

840.205 Application requirements.

840.207 Selection process.

840.210 Threshold requirements.

840.215 Ranking criteria.

840.225 Final selection.

Subpart E—Program Requirements

840.300 Grant agreement.

840.305 Required agreements.

840.310 Term of commitment and repayment of advance.

840.312 Casualty insurance.

840.313 Eminent domain.

840.315 Prevention of undue benefits.

840.320 Resident rent.

840.325 Resident discharge.

840.330 Applicability of other Federal requirements.

Subpart F—Administration

840.400 Obligation of funds, funding amendments, and deobligation.

Authority: Section 428, Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 840.1 Applicability and scope.

(a) *General.* The Supportive Housing Demonstration program contained in Subtitle C of Title IV of the Stewart B. McKinney Homeless Assistance Act is designed to develop innovative approaches for providing supportive housing, especially to deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons. It is designed to determine:

(1) The cost of acquisition, rehabilitation, acquisition and rehabilitation, or leasing of existing structures for the provision of supportive housing;

(2) The cost of operating such housing and providing supportive services to the residents of such housing;

(3) The social, financial, and other advantages of such housing as a means of assisting homeless individuals; and

(4) The lessons that the provision of supportive housing might have for the design and implementation of housing programs that serve homeless individuals and families with special needs, particularly deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons.

A central purpose of the Supportive Housing Demonstration program is to provide supportive housing for deinstitutionalized homeless individuals and other homeless individuals with mental disabilities.

(b) The Supportive Housing Demonstration program consists of two components: permanent housing for handicapped homeless persons and transitional housing. This part implements the transitional housing component of the program. Part 841 provides for a program to assist in providing permanent housing for handicapped homeless persons.

§ 840.5 Definitions.

As used in this part:

Applicant means a State, metropolitan city, urban county, governmental entity, tribe, or private nonprofit organization that submits an application for assistance under this part.

Governmental entities include those that have general governmental powers (such as a city or county), as well as those that have limited or special powers (such as public housing agencies). Applicant includes two or more of these entities that submit a joint application.

Comprehensive Homeless Assistance Plan or Plan means the Comprehensive Assistance Plan established by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987).

Date of initial occupancy means the date that the project is initially occupied by a homeless person for whom assistance is provided under this part. If the assistance provided under this part is used only for the purposes described under § 840.125(a)(1)(ii), the date of initial occupancy is the date that expanded services are first provided to the residents of the project.

Deinstitutionalized homeless individual means a homeless individual with mental disabilities who has been discharged or released from a mental institution or hospital, a halfway house, transitional housing or similar facilities providing housing and supportive services to its residents. This term includes a homeless family, if the head of the family (or the spouse of the head of the family) is a deinstitutionalized homeless individual.

ESG formula city or county means a metropolitan city or urban county that is eligible to receive a formula allocation under the Emergency Shelter Grants program established by Subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act.

Handicapped or Handicapped person means any individual having an impairment that is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that the ability to live independently could be improved by a stable residential situation. This term includes:

(a) An individual who is developmentally disabled, i.e., an individual who has a severe chronic disability that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity:

- (i) Self-care,
- (ii) Receptive and expressive language,
- (iii) Learning,
- (iv) Mobility,
- (v) Self-direction,
- (vi) Capacity for independent living, and

(vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care,

treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(b) An individual who is chronically mentally ill, i.e., an individual who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (e.g., by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, or recreation), and whose impairment could be improved by more suitable housing conditions.

(c) A handicapped person who also suffers from alcoholism or drug addiction.

Homeless means:

(a) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(b) An individual or family that has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

Homeless family with children means a homeless family that includes at least one parent or guardian, and one child under the age of 18.

Homeless individual with mental disabilities means a homeless individual who is a handicapped person and whose handicap is wholly or partially attributable to a mental or emotional impairment. This term includes a homeless family, if the head of the family (or the spouse of the head of the family) is a homeless individual with mental disabilities.

HUD means the Department of Housing and Urban Development.

Metropolitan city means a city that is classified as a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974. In general, metropolitan cities are those cities that are eligible for an entitlement grant under 25 CFR Part 570, Subpart D.

Moderate rehabilitation means the rehabilitation of a project involving a total HUD expenditure that does not exceed the limitations described under § 840.110.

Operating costs means expenses that a recipient incurs for:

(a) The administration, maintenance, minor or routine repair, security and rental of the housing;

(b) Utilities, fuel, furnishings, and equipment for the housing;

(c) Conducting resident supportive services needs assessments (see § 840.305(b)); and

(d) The provision of supportive services to the residents of the housing. This term does include expenses that a recipient incurs for debt service in connection with a loan used to finance

acquisition or rehabilitation costs under the program.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

- (a) Have a voluntary board;
- (b)(1) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or
- (2) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and
- (c) Practice nondiscrimination in the provision of assistance under the transitional housing program in accordance with the authorities described in § 840.330(a).

Project means one or more existing structures, or parts of one or more existing structures, owned (or leased) by a recipient for use in connection with transitional housing.

Recipient means an applicant that HUD approves as to financial responsibility and that executes a grant agreement with HUD to provide transitional housing. The recipient must operate transitional housing; and provide (or coordinate the provision of) supportive services to the residents of the housing.

Rehabilitation means labor, materials, tools, and other costs of improving structures to a level that meets or exceeds applicable State and local government health and safety standards. Rehabilitation includes repairs directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, and improvement through alterations or additions to, or enhancement of, existing structures, including improvements to increase the efficient use of energy in structures. Rehabilitation does not include minor or routine repairs or cosmetic repairs or improvements.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Substantial rehabilitation means the rehabilitation of a project that involves a total HUD expenditure in excess of the limitations described under § 840.110.

Supportive services means services provided to residents of transitional

housing. Supportive services must be proposed by the applicant in its application and approved by HUD; must address the special needs of the homeless to be served by the project (such as deinstitutionalized homeless individuals, homeless families with children, homeless individuals with mental disabilities and other handicapped homeless persons); and must assist in accomplishing the purposes of transitional housing. Supportive services may include:

- (a) Assistance in obtaining permanent housing;
- (b) Medical and psychological counseling and supervision;
- (c) Employment counseling;
- (d) Nutritional counseling;
- (e) Assistance in obtaining other Federal, State, and local assistance available for residents of transitional housing facilities, including mental health benefits; employment counseling; medical assistance; Veterans' benefits; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps; and
- (f) Other services, such as child care, transportation, job placement and job training.

Transitional housing means a project assisted under this part:

- (a) That provides housing and supportive services to homeless persons; and
- (b) That has as its purpose facilitating the movement of homeless individuals to independent living within a reasonable amount of time, not to exceed 18 months for any homeless individual.

All or part of the supportive services may be provided directly by the recipient or by arrangement with public or private service providers. Transitional housing means housing that is designed to serve the homeless including (but not limited to): deinstitutionalized homeless individuals, homeless individuals with mental disabilities, homeless families with children, homeless runaway children, homeless victims of domestic violence, the homeless unemployed, or appropriate combinations of these populations.

Tribes means an Indian tribe, band, group or nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaska Native Village, of the United States, considered an eligible recipient under the Indian Self Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).

Urban county means a county that is classified as an urban county under section 102(a)(6) of the Housing and Community Development Act of 1974. In general, urban counties are those counties that are eligible for an entitlement grant under 24 CFR Part 570, Subpart D.

Subpart B—Assistance Provided

§ 840.100 Types of assistance.

(a) *Assistance available.* Four types of assistance are available for transitional housing: acquisition/rehabilitation advances, moderate rehabilitation grants, funding for annual operating costs, and technical assistance.

(b) *Eligibility for more than one type of assistance.* Applicants may be eligible for one or any combination of the types of assistance, except that HUD will not award both a moderate rehabilitation grant and an acquisition/rehabilitation advance to a recipient, and will offer technical assistance only in connection with other assistance under this part.

§ 840.105 Acquisition/rehabilitation advances.

(a) *Use.* HUD will advance sums to recipients to defray the cost of the acquisition, substantial rehabilitation, or acquisition and rehabilitation of existing structures selected by the recipients for use in the provision of transitional housing.

(b) *Amount.* The acquisition/rehabilitation advance may not exceed the lesser of:

- (1) \$200,000; or
- (2) 50 percent of the aggregate cost of acquisition, substantial rehabilitation, or acquisition and rehabilitation (see § 840.130 for a full discussion of the 50 percent matching requirement).

(c) *Terms of the advance.* Advances are interest-free, and if the conditions described in § 840.310 are met, are not subject to repayment. The sale or disposition of a structure acquired or rehabilitated with an advance is subject to the requirements of § 840.315.

§ 840.110 Moderate rehabilitation grants.

(a) *Use.* HUD will make grants to recipients to defray the cost of rehabilitation of existing structures selected by the recipients for use in the provision of transitional housing.

(b) *Amount.* (1) The moderate rehabilitation grant may not exceed the lowest of:

- (i) \$100,000;
- (ii) The project limit; or
- (iii) 50 percent of the cost of rehabilitation (see § 840.130 for a full

discussion of the 50 percent matching requirement).

(2) For the purposes of this section, "project limit" means the amount determined by HUD by multiplying the number of units of each unit type in the project times the unit cost for that unit. The cumulative total for all unit types is the project limit. The unit cost limits are:

(i) \$5,000:

(A) Per bedroom unit, in single room occupancy housing (i.e., a unit which contains no sanitary facilities or food preparation facilities, or which contains one but not both types of facilities, and which is suitable for occupancy by a single individual);

(B) Per bedroom unit, in a group home; or

(C) Per unit without a bedroom, in other types of projects; and

(ii) \$7,000 per unit with one or more bedrooms, in other types of projects.

(c) *Terms of the grant.* The sale or disposition of a structure rehabilitated with a grant under this section is subject to the requirements of § 840.315.

§ 840.115 Funding for annual operating costs.

(a) *General.* HUD will provide funding of up to 50 percent of the annual operating costs of transitional housing. [See § 840.130 for a full discussion of the 50 percent matching requirement.]

(b) *Commitment of amounts for operating costs.* Upon approval of an application requesting operating cost assistance, HUD will obligate amounts for the period sought, not to exceed five years. Each annual funding level will be equal to an amount not to exceed the recipient's estimate of operating costs for the first year of operation, less the recipient's matching contribution. Each year, for up to five years, HUD will make operating cost payments to the recipient from the amounts obligated. The annual funding level will be subject to reduction under § 840.400.

§ 840.120 Technical assistance.

Technical assistance will be offered only in connection with an award of funds under § 840.105, § 840.110 or § 840.115. Technical assistance is offered to recipients through HUD field offices in such matters as the computation of resident rent under § 840.320, compliance with other Federal requirements under § 840.330, the identification of Federal housing assistance resources that may be available to residents upon their departure from transitional housing, and engineering recommendations and other advice on rehabilitation plans and work write-ups. HUD will also facilitate the exchange of information among

recipients, and help recipients to learn from the experience of other participants in the program.

§ 840.125 Limitations on use of assistance.

(a) *Funding of existing housing facilities and programs.* (1) HUD will not provide acquisition/rehabilitation advances, moderate rehabilitation grants or funding for annual operating costs for existing facilities or programs that currently serve homeless persons, unless the applicant proposes:

(i) A substantial increase in the number of homeless persons for whom transitional housing will be provided;

(ii) A substantial increase in the level of supportive services to be provided to homeless persons; or

(iii) A substantial change in the use of existing facilities, e.g., if existing facilities for the homeless that are not currently used for transitional housing (such as an emergency shelter for the homeless) will be used to provide transitional housing, or if an applicant currently providing transitional housing for one population of homeless persons proposes to serve an additional or alternative segment of the homeless population.

(2) If an application seeking funding of existing housing facilities or programs is selected, assistance under this program will be limited to 50 percent of the cost of the increased operating costs, 50 percent of the increased cost of acquisition/rehabilitation, or 50 percent of the cost of moderate rehabilitation, attributable to the increased number of homeless persons for whom transitional housing would be provided, the increased level of supportive services to be provided, or the change in use.

(b) *Maintenance of effort.* (1) No assistance received under this part (or any State or local government funds used to supplement this assistance) may be used to replace funds provided in the area to be served by the applicant under any State or local government assistance program, if the funds provided under the State or local government assistance program were used to assist handicapped persons, homeless individuals, or handicapped homeless persons (as defined in § 841.5 of this title) during the calendar year preceding the date of the application, or were designated for such use through an official action of the applicable State or local government during the calendar year preceding the date of the application.

(2) For the purposes of this section, the area to be served by the applicant is: (i) The State, if the applicant is a State;

(ii) The metropolitan city, if the applicant is a metropolitan city;

(iii) The urban county, if the applicant is an urban county;

(iv) The tribal jurisdiction, if the applicant is a tribe; and

(v) Cities and counties to be served by the project, if the applicant is a private nonprofit organization or a governmental entity.

(c) *Leases.* (1) Acquisition/rehabilitation advances are not available to defray the costs of acquiring a lease on existing property.

(2) Acquisition/rehabilitation advances and moderate rehabilitation grants are available for the rehabilitation of leased property.

(3) To be eligible to receive assistance for a project leased by a recipient under this Part, the lease must run for a term of at least 10 years after the date of initial occupancy of the housing.

(d) *New construction.* Assistance under this part may not be used for the new construction of housing. Assistance is limited to transitional housing provided in existing structures.

(e) *Primarily religious organizations.*—(1) *Provision of assistance.* (i) HUD will not provide assistance to a recipient that is a primarily religious organization, unless the organization agrees to provide housing and supportive services in a manner that is free from religious influences and in accordance with other conditions described in the grant agreement.

(ii) HUD will not provide assistance to a recipient that is a primarily religious organization, if the assistance will be used by the organization to acquire a structure or will be used to rehabilitate a structure owned by the organization.

(2) Transitional housing provided in structures owned by a primarily religious organization. An acquisition/rehabilitation advance and the moderate rehabilitation grant may not be used to rehabilitate a structure owned by a primarily religious organization, unless:

(i) The structure (or portion of the structure) that is to be rehabilitated with the HUD assistance has been leased) to a recipient that is a wholly secular organization;

(ii) The HUD assistance is provided to the recipient to make the improvements, rather than to the primarily religious organization;

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion;

(iv) The lease payments provided to the primarily religious organization do

not exceed the fair market rent of the structure without the rehabilitation;

(v) The cost of improvements that benefit the portion of the structure that is not leased by the recipient for the provision of transitional housing will be allocated to and paid for by the primarily religious organization; and

(vi) The primarily religious organization agrees that if the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the recipient and the recipient will remit the amount to HUD.

(3) Assistance to a wholly secular private nonprofit organization established by a primarily religious organization. (i) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a recipient. This wholly secular organization may be eligible to receive all forms of assistance available under this part.

(A) The wholly secular organization must agree to provide housing and supportive services in a manner that is free from religious influences and in accordance with other terms described in the grant agreement.

(B) The wholly secular organization may enter into a contract with the primarily religious organization to provide supportive services for the project. In such a case, the primarily religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with conditions prescribed by HUD.

(C) The acquisition/rehabilitation advance and the moderate rehabilitation grant are subject to the requirements of paragraph (2) of this section.

(ii) HUD will not require the primarily religious organization to establish the wholly secular organization before the selection of its application. In such a case, the primarily religious organization may apply on behalf of the wholly secular organization. The application will be reviewed on the basis of the primarily religious organization's financial responsibility and capacity, and its commitment to provide appropriate resources to the wholly secular organization after formation (see §§ 840.210 (b)(2)(ii) and (b)(2)(iii) and 840.215(b)(1)). Additionally, the primarily religious organization must demonstrate site control under § 840.210(b)(4)(iv)(A) and a commitment to transfer control of the site to the wholly secular organization after its formation. Since the wholly secular

organization will not be in existence at the time of the application, it will be required to demonstrate that it meets the definition of private nonprofit organization and has the appropriate legal authority to participate in the program following selection (see § 840.210 (b)(2)(i) and (b)(2)(iv)). If such an application is selected for funding, the obligation of funds will be conditioned upon the compliance with these requirements.

(f) *Structures used for multiple purposes.* Structures used to provide transitional housing may also be used for other purposes. For example, a structure may contain facilities for an emergency shelter as well as transitional housing, may be used to provide supportive services to the public at large, or may include commercial space. Under these circumstances, however, the acquisition/rehabilitation advance and the moderate rehabilitation grant will be available only in proportion to the use of the structure for transitional housing, and the funding for annual operating costs will be available only to support the costs that are related to the transitional housing to be provided. If the applicant holds, or is donated, an interest in a structure and the structure will be used for multiple purposes, only that portion of the value of the structure that will be used for transitional housing may be included in the computation of the applicant's matching computation under § 840.130.

(g) *Administrative costs.* No more than five percent of an acquisition/rehabilitation advance or moderate rehabilitation grant provided under this part may be used for administrative purposes.

§ 840.130 Matching requirements.

(a) *General.* The recipient must match the funding provided by HUD under this part with at least an equal amount of funds from other sources.

(b) *Assistance categories.* Recipients must meet this matching requirement for each category of assistance received. The most HUD will provide for an acquisition/rehabilitation advance, a moderate rehabilitation grant, or funding for annual operating costs is 50 percent of the respective costs of each of these activities. No match is required for technical assistance.

(c) *"In-kind" contributions.* (1) Except as provided in paragraph (c)(2) of this section, "in-kind" contributions, including the value of supportive services provided by outside service providers, are excluded from the matching calculation.

(2) HUD will include in the matching calculation the value of contributions of

materials or contributions of existing structures or parts of structures, as described below:

(i) A contribution of materials may be included in the calculation of a recipient's match for an acquisition/rehabilitation advance or a moderate rehabilitation grant if the materials will be used in the rehabilitation of a structure for use as transitional housing.

(ii) A contribution of materials may be included in the calculation of a recipient's match for funding of annual operating costs if the cost of the materials would fall within the definition of operating costs under § 840.5.

(iii) A contribution of a fee ownership in a structure may be included in the calculation of a recipient's match for an acquisition/rehabilitation advance, to the extent of the fair market value of the structure.

(iv) A contribution of a leasehold interest in a structure may be included in the calculation of a recipient's match for funding of annual operating costs, to the extent of the fair rental value of the building.

(d) *Existing homeless programs.* Applicants seeking funding for existing programs must commit new funds in order to satisfy the matching requirement. The resources necessary to maintain and operate the program at the current level are excluded from the matching computation (see § 840.125(a)).

(e) *Maintenance of effort.* State or local government funds used in the matching contribution are subject to the maintenance of effort requirements described at § 840.125(b).

(f) *Other federally assisted programs.* Except for funds made available under HUD's Community Development Block Grant program, applicants may not include funds provided under a federally assisted program in the computation of their portion of the matching requirement.

(g) *Rental income.* Rental amounts paid by residents of transitional housing under § 840.320 may be included in the calculation of the recipient's match for funding of annual operating costs.

§ 840.135 Assistance under other HUD programs.

(a) *Supplemental assistance.* HUD will permit the use of additional assistance for transitional housing in connection with the program contained in Subtitle D of Title IV of the Stewart B. McKinney Homeless Assistance Act—Supplemental Assistance for Facilities to Assist the Homeless.

(b) *Ineligible projects.* HUD will not assist a project under this part, if the

project involves a structure that is assisted, or residents of the structure will receive assistance under the United States Housing Act of 1937, section 202 of the Housing Act of 1959, section 221(d)(3)(B)(MIR) or section 236 of the National Housing Act; or section 101 of the Housing and Development Act.

(c) *HUD-owned properties.* HUD, in cooperation with PHAs and local governments, will make HUD-owned single family properties in its inventory available to parties for purchase for use as transitional housing. To obtain these properties, parties may request a listing of available properties from the HUD Field Office, Property Disposition Branch. If a party wishes to purchase a property or properties, it must request the PHA or unit of local government to enter into a lease/option agreement with HUD. Under the terms of the agreement, HUD will lease the property to the PHA or unit of local government for six months for one dollar. The lease/option agreement will state that the PHA or unit of local government may purchase the property at a stated price during the lease period, and will require the PHA or unit of local government to assign all rights under the agreement to the party. Applicants demonstrating an assignment of rights under a lease/option agreement at the time their application is filed will be regarded as having site control of the property under § 840.210(b)(4)(iv)(A). If the option is not exercised, the lease/option agreement will expire at the end of six months, and the property will be returned to HUD's inventory.

Subpart C—Comprehensive Homeless Assistance Plan

§ 840.150 Comprehensive Homeless Assistance Plan.

(a) *Prohibition of assistance.* Assistance under this part may not be provided to, or within the jurisdiction of a State or an ESG formula city or county, unless the jurisdiction has a HUD-approved Comprehensive Homeless Assistance Plan.

(b) *Who must have an approved Plan.* The requirements described in paragraph (a) of this section apply to applicants for assistance under this part as follows:

(1) If the applicant is a State, the State must have an approved Plan.

(2) If the applicant is an ESG formula city or county, the city or county must have an approved Plan.

(3) If the applicant is a governmental entity that is not an ESG formula city or county and the transitional housing is to be located within the jurisdiction of an

ESG formula city or county, the city or county must have an approved Plan.

(4) If the applicant is a governmental entity that is not an ESG formula city or county and the transitional housing is to be located outside the jurisdiction of an ESG formula city or county, the State must have an approved Plan.

(5) If the applicant is a private nonprofit organization and the transitional housing is to be located within the jurisdiction of an ESG formula city or county,

(i) The city or county must have an approved Plan, or

(ii) If the ESG formula city or county does not have an approved Plan, the State must have an approval Plan.

(6) If the applicant is a private nonprofit organization and the transitional housing is to be located outside the jurisdiction of an ESG formula city or county, the State must have an approved Plan.

(c) *Tribes.* Assistance may be provided to, or within the jurisdiction of, a tribe without a HUD-approved Comprehensive Homeless Assistance Plan.

(d) *Notification of Plan requirements.* HUD will publish the requirements that pertain to the Comprehensive Homeless Assistance Plan in the Federal Register, as necessary. Prospective applicants should familiarize themselves with these requirements.

Subpart D—Application and Selection Process

§ 840.200 Notice of fund availability.

When funds are made available for assistance for transitional housing, HUD will publish a notice of fund availability in the Federal Register. The notice will:

(a) Give the location for obtaining application packages that provide specific application requirements and guidance;

(b) Specify the time and the place for submitting completed applications;

(c) State the amount of funding available under the notice;

(d) Announce any separate funding competitions under § 840.207(b), including the categories of transitional housing projects that will be subject to the separate funding competitions and the amount of funding available in each funding category; and

(e) Provide other appropriate program information and guidance.

§ 840.205 Application requirements.

(a) *General.* Applicants must submit applications for assistance under this part in the form and within the time periods established by HUD.

(b) *Application requirements.* At a minimum, HUD will require applications to include:

(1) Applicant data (identity, evidence of eligibility, description of past experience, legal authority to submit the application and to operate the proposed housing, and information necessary to demonstrate financial responsibility);

(2) A description of the size and characteristics of the population that will occupy the transitional housing (including a description of the particular homeless population to be served, number of individuals to be served in the project, and supportive services required by the proposed residents);

(3) A description of the proposed project, including:

(i) Information regarding the structure to be used (including site control and zoning data, information concerning the consistency of the proposal with local government plans, a description of the structure and of any proposed rehabilitation, and an appraisal if building fair market or fair rental value is to be used to fulfill matching requirements);

(ii) A narrative description of the proposed operations (including the supportive services to be offered to the residents, the method that will be used to provide or coordinate the provision of such services, procedures for resident selection and assessment, a proposed limitation on the length of resident stay in the project, and evidence demonstrating that this proposed limitation provides an appropriate opportunity to permit members of the homeless population to be served to move to independent living);

(4) A certification of consistency with the applicable Comprehensive Homeless Assistance Plan as described under § 840.210(b)(4)(v)(B);

(5) Project financial data (amount of assistance requested, a five-year operating budget, and a description of the public and private resources that are expected to be made available to comply with the matching requirements of § 840.130);

(6) Assurances satisfactory to HUD that the project will be operated for not less than 10 years in accordance with this part;

(7) A maintenance of effort certification as described in § 840.210(b)(5);

(8) A statement that the applicant agrees to fulfill the requirements set forth in § 840.305; and

(9) Other data as prescribed by HUD.

(Approved by the Office of Management and Budget under OMB Control number 2502-0361.)

§ 840.207 Selection process.

(a) *Three stage selection process.* The selection process for applications for assistance under this part consists of three stages:

(1) The threshold stage (see § 840.210);
(2) The ranking stage (see § 840.215);
and

(3) The final selection stage (see § 840.225).

(b) *Separate funding competitions.* (1) In accordance with funding set-asides, funding priorities, or other statutory guidance, HUD may establish separate funding competitions for specified categories of transitional housing projects. (E.g., transitional housing that is primarily designed to serve homeless families with children or deinstitutionalized homeless persons and other homeless persons with mental disabilities.) If separate funding competitions are established, applicants within each category will compete against other applicants in the same category for a specified amount of funding. Selections within each category will be subject to the three-stage selection process described in paragraph (a) of this section.

(2) HUD will announce separate funding competitions in the notice of funds availability under § 840.200. The notice will designate the categories of transitional housing projects subject to the separate funding competition and the amount of funding available in each funding category.

§ 840.210 Threshold requirements.

(a) *General.* To be eligible for evaluation under the ranking criteria set out in § 840.215, applications must meet each of the threshold criteria described below (as modified for wholly secular private nonprofit organizations established by a primarily religious organization under § 840.125(e)). If HUD determines that an application fails to meet the threshold criteria in paragraph (b)(3) (matching), (b)(4)(iv)(A) (site control), or (b)(4)(iv)(B) (zoning) of this section, that these are the only deficiencies in the application under the threshold criteria, and that the deficiencies are correctable, HUD may contact the applicant, identify the deficiencies, explain how the deficiencies can be corrected, and require the applicant to correct the deficiencies. HUD will establish a deadline for the submission of the additional information that will permit the Department to meet its deadlines for final selection. Applications that fail to meet all threshold criteria, including those that have not been corrected within any additional time provided by

HUD, will not be eligible for assistance under this part.

(b) *Threshold criteria.* The threshold criteria are:

(1) *Form, time, and adequacy of the application.* The application must be filed in the application form prescribed by HUD under § 840.205 and by the time period established by HUD in the notice of funds availability under § 840.200.

(2) *Applicant.*—(i) *Eligibility to receive assistance.* The applicant must demonstrate that it is a State, a metropolitan city, an urban county, a governmental entity, a tribe, or a private nonprofit organization.

(ii) *Financial responsibility.* HUD has determined, for purposes of the requirements of this part, that all States, metropolitan cities, urban counties, governmental entities and tribes are financially responsible.

(B) Any private nonprofit organization applying for assistance must demonstrate its financial responsibility. In making its determination of financial responsibility, HUD will consider such factors as the past financial history of the organization, its current and anticipated financial outlook, the amount of funding that will be committed under the proposal, and the applicant's other financial responsibilities.

(iii) *Capacity.* Each applicant must demonstrate that it has the ability to carry out activities under this part within a reasonable time after execution of the grant agreement with HUD, and in a successful manner. In making this determination, HUD will consider the extent and quality of the applicant's past experience in establishing and operating housing or in providing or coordinating supportive services. HUD also will consider the ability of the applicant's personnel to perform administrative, managerial, and operational functions necessary to the successful development and operation of transitional housing.

(iv) *Legal authority.* (A) Each applicant must demonstrate that it has the legal authority to participate in the program and to carry out activities in accordance with program requirements and the requirements of other applicable Federal law; and

(B) Private nonprofit organizations applying for assistance must certify that a resolution, motion, or similar action has been duly adopted or passed as an official act by its governing body, authorizing the submission of the application under this part. States, metropolitan cities, urban counties, governmental entities, and tribes must certify that a resolution, motion, or similar action has been duly adopted or

passed as an official act by its governing body, authorizing the submission of the application under this part; or certify, and provide adequate supporting documentation, that the applicant is empowered under State or local law to carry out program activities without obtaining the approval of the local governing body.

(3) *Matching.*—(i) *General.* Each applicant must demonstrate that it will match the amount of the assistance to be provided by HUD under this part with at least an equal amount of funds from other sources, in accordance with the requirements of § 840.130.

(ii) *Documentation.*—(A) *In general.* Applicants must provide a description and appropriate documentation of the sources and amounts of the public and private funds that are expected to be made available to meet the applicant's matching requirement under § 840.130.

(B) *Funds from entities other than the applicant.* If the source of the applicant's contribution is an entity other than the applicant (e.g., funding provided to a private nonprofit organization through State or local agencies), HUD must find that the documentation is sufficient to demonstrate a commitment to provide the funds if the application is selected for funding under this part.

(1) A commitment to provide matching funds for acquisition/rehabilitation costs or a moderate rehabilitation grant must be a firm commitment from the funding source. This firm commitment must demonstrate the source's binding commitment to provide funds and the date upon which funds will be available. This commitment may be contingent upon the selection of the applicant for funding under this part.

(2) A commitment to provide funds for operating costs may be in the form of a letter of intent demonstrating the reasonable expectation of the funding source and its resolve to provide a stated amount of funds at a stated date in the future, if the application is selected for funding. The letter of intent may be subject to governing board approval and other contingencies beyond the contingency of selection of the applicant for funding, provided there is a reasonable expectation and resolve by the source to provide the funding.

(3) *In-kind contributions.* To be accepted for consideration in the matching computation, the applicant must support the fair market value or fair rental value of a structure which an appraisal acceptable to HUD prepared by a qualified real estate appraiser, and must provide appropriate documentation (e.g., an invoice or a

receipt) supporting the valuation of any contribution of materials.

(C) *Rental income.* HUD will include rental amounts to be paid by residents of transitional housing as a part of the applicant's matching contribution for funding for payments of annual operating costs, if the rental amounts are substantiated. An applicant may substantiate rental amounts based on the rental income experience of the applicant or others, indicating the amount of income that residents are likely to receive. The estimate of resident income must be adjusted to take into account the length of time necessary for homeless persons to qualify for Federal, State, or local income-support assistance or to find employment, and any other factors that may reasonably be expected to affect the amount and timing of resident income. To compute the estimate of rental income, anticipated resident income must be adjusted to reflect the rental income calculation requirements of § 840.320. Alternatively, for the purposes of computing the rental amount for leveraging, the applicant may assume that rental income to be received from residents will be equal to 10 percent of the resident income estimate.

(4) *Proposed housing and supportive services.*—(i) *Need.* The applicant must demonstrate that an unmet need for the proposed transitional housing exists in the area to be served and that this need is likely to continue through the term of the commitment to HUD. Need may be demonstrated by information such as:

(A) Estimates, based on past experience in the community, of unmet demand for the proposed transitional housing by the homeless population to be served;

(B) Present need for the proposed transitional housing, based on estimates of the homeless population to be served; or

(C) Projections of future need for the proposed transitional housing.

Applicants may use relevant information contained in the Comprehensive Homeless Assistance Plan to demonstrate an unmet need for the proposed transitional housing.

(ii) *Adequacy of the proposed supportive services.* (A) Each applicant must demonstrate that the supportive services proposed (including the residential supervision to be provided) appropriately address the needs of the homeless population to be served, and are sufficient to serve the purposes of the proposed transitional housing. (E.g., Proposals for transitional housing must be sufficient to facilitate the movement

of homeless persons to independent living within a reasonable period of time.)

(B) In determining the adequacy of proposed services, HUD will assess the supportive services to be provided to the residents by the applicant and through other private and public organizations. Supportive services may be provided on-site, or off-site if the services are readily accessible to the homeless population to be served. Services are readily accessible if residents can get to the services on their own, or if transportation is provided to the site where the services are provided.

(C) Where services are to be provided through other private or public organizations, the applicant must secure a letter of intent from each organization, indicating its willingness and ability to provide the services to the residents of the housing, and must attach these letters to the application.

(iii) *Adequacy of the proposed housing.* Applicants must demonstrate that the proposed structures and sites are appropriate for the provision of housing and supportive services for the homeless population proposed to be served. When determining whether a structure will be suitable for the provision of supportive services, HUD will consider whether the structure is designed to permit the provision of proposed on-site supportive services, and whether any proposed off-site supportive services are readily accessible.

(iv) *Siting and zoning.* Except as provided in paragraph (a) of this section, applicants must meet the following siting and zoning requirements at the time of application:

(A) The applicant must demonstrate that it has control of the site involved. For example, the applicant may demonstrate that it owns or has an option to purchase, or leases or has an option to lease, the structure involved.

(B) The applicant must demonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within 4 months following the submission of the application.

(C) The applicant must submit a statement that the proposed project is not located in any 100-year floodplain, as designated by maps prepared by the Federal Emergency Management

Agency (FEMA). If 50 percent or more of the living space in the structure is designed for residents with mobility impairments, the applicant must submit a statement that the project is not located in any 500-year floodplain, as designated on FEMA maps. While applications that fail to meet the requirements of subparagraphs (A) and (B) of this paragraph (b)(4)(iv) may be corrected after the submission of the application in accordance with paragraph (a) of this section above, applications that do not contain the required floodplain statement will not be eligible for assistance under this part.

(v) *Consistency with government plans.*—(A) *Consistency with local government plans.* Applicants must furnish a written statement from the unit of general local government in which the transitional housing is proposed to be located, indicating that the proposed use of the structure and site for transitional housing is not inconsistent with any plan of the local government that may have an effect on the use of the structure and site for this purpose. This requirement is satisfied if the applicant demonstrates that it made a written request to the unit of local government for the statement and has not received the statement within 30 days of the request. (Applicants must immediately forward to HUD any written statement received from the unit of local government after the expiration of this 30-day period.)

(B) *Consistency with Comprehensive Homeless Assistance Plan.* Applicants must provide a certification from the public official responsible for submitting a Comprehensive Homeless Assistance Plan for the appropriate jurisdiction (as described under § 840.150) stating that the proposed project is consistent with the applicable Comprehensive Homeless Assistance Plan.

(vi) *Displacement.* Each applicant must certify that its proposed activities will not result in the displacement of any person or entity. HUD will not fund applications that will cause any individual, family, partnership, corporation, or association to move from real property or to move its personal property from real property because of an actual or impending acquisition or rehabilitation, in whole or in part, for a project. Displacement does not include:

(A) A move by a residential tenant-occupant to a suitable dwelling unit within the same building or within the same site, provided that all out-of-pocket expenses related to the move are reimbursed by the recipient; or

(B) A move by an owner-occupant who has voluntarily sold his or her real

property after being informed in writing by the applicant that the applicant would not acquire the property if a mutually satisfactory agreement of sale could not be reached. In such a case, however, a move by a tenant-occupant of the real property (other than by the owner) may constitute displacement. (For further information on such owner-occupant sales, see 24 CFR Part 42, Appendix A, 24 CFR § 42.101(a).)

(5) *Maintenance of effort.* Each applicant must certify that the use of assistance received under this part (and State and local government funds used to supplement this assistance) complies with § 840.125(b).

(6) *Proposal feasibility.* Each applicant must demonstrate that its proposal, when viewed as a whole, is operationally feasible and provides adequate housing and supportive services to serve the purposes of the transitional housing program.

(7) *Environmental review.* (i) HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. Any application that requires an Environmental Impact Statement (EIS) (generally, those applications that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR Part 50, Subpart E) will not pass threshold review and will not be eligible for assistance under this part.

(ii) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures are taken to mitigate environmental impacts. (See e.g., 24 CFR Part 51). If such application passes threshold review, HUD will consider the anticipated time delays in adopting appropriate impact mitigation measures in the ranking stage of the selection process. The environmental review may also reveal other information not contained in the application that may have relevance to the selection process. HUD will consider such information in the selection process.

(Approved by the Office of Management and Budget under OMB Control Number 2502-0361.)

§ 840.215 Ranking criteria.

(a) *In general.* Applications that fulfill each of the threshold requirements of § 840.210 will be assigned a rating score and will be placed in ranked order, based upon the criteria described in paragraph (b) of this section.

(b) *Criteria.* Applications will be assigned a rating and will be ranked, based on the following criteria:

(1) *Applicant capacity.* HUD will consider the applicant's relative ability to carry out activities under the program within a reasonable time, and in a successful manner, after the execution of the grant agreement with HUD. The factors HUD will consider in making this judgment are discussed in § 840.210(b)(2)(iii). HUD will assign the

greatest number of points under this criterion to applicants that have experience in establishing and operating transitional housing for homeless persons and in providing or coordinating supportive services for its residents and that demonstrate, on the basis of prior experience, the greatest ability to carry out activities under the program expeditiously and successfully.

(2) *Innovative quality of proposal.* HUD will consider the innovative quality of the proposal in providing housing and supportive services for homeless persons in a manner that facilitates their transition to independent living. In assessing an application under this factor, HUD will consider the degree to which the applicant demonstrates that:

(i) The proposal uses a new or unusual approach to transitional housing that holds promise of successfully facilitating the transition of homeless persons to independent living; and

(ii) The new or unusual approach that the applicant will use would be replicable by others.

(3) *Coordination of supportive services.* HUD will consider:

(i) The extent to which the applicant will use other public or private entities to provide appropriate supportive services to the residents of the housing; or

(ii) If the services are to be provided directly by the applicant, the extent to which the applicant:

(A) Will provide the services with funds that are obtained from sources other than under this program and that have not been used as part of the applicant's matching contribution (see §§ 840.130 and 840.210(b)(3)), or

(B) Has demonstrated that the services are not available or readily accessible to the residents from other sources.

HUD will assign the greatest number of points under this element to applicants that meet one or more of these tests to the greatest extent.

(4) *Matching.* HUD will consider the extent to which the applicant proposes to match the amount of assistance to be

provided by HUD under the program with more than an equal amount of funds from other sources. Matching requirements are discussed at §§ 840.130 and 840.210(b)(3).

(5) *Cost effectiveness.* HUD will consider the extent to which the applicant's proposed costs in acquiring or rehabilitating housing under the program, and in operating the housing and providing supportive services: (i) are reasonable in relation to the rehabilitation performed, the properties acquired, and the goods and services purchased; and (ii) are effective in accomplishing the purposes of the project.

§ 840.225 Final selection.

In the final stage of the selection process, the highest-ranked applications will be considered for final selection in accordance with their rank order, as determined under § 840.215. If the top-rated applications under the ranking criteria described above involve projects that predominantly serve one geographic area, primarily serve one homeless population, or are substantially of the same project size (in terms of the number of homeless persons served), HUD may substitute one or more other highly-rated applications to ensure reasonable variety in the demonstration.

Subpart E—Program Requirements

§ 840.300 Grant agreement.

(a) *General.* The duty to provide transitional housing in accordance with the requirements of this part will be incorporated in a grant agreement executed by HUD and the recipient.

(b) *Enforcement.* HUD will enforce the obligations in the grant agreement through such action as may be appropriate. For recipients that are private nonprofit organization receiving assistance in the form of an acquisition/rehabilitation advance or a moderate rehabilitation grant, restrictions regarding the use of structures will be contained in covenants recorded in the land records of the jurisdiction in which the structure is located.

§ 840.305 Required agreements.

Each recipient of transitional housing assistance must agree:

(a) To operate the transitional housing in accordance with this part.

(b) To conduct an ongoing assessment of the supportive services required by the residents of the project.

(c) To provide such residential supervision as HUD determines is necessary to facilitate the adequate provision of supportive services to the

residents of the housing throughout the term of the commitment to operate transitional housing. Such residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of, supportive services to the residents of the transitional housing.

(d) To use the structure for which assistance is provided as transitional housing for not less than 10 years following the date of initial occupancy.

(e) To provide safe and sanitary housing, and to comply with all State and local housing codes, licensing requirements, and other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the transitional housing (except as provided in § 840.325).

(f) To keep any records and make any reports that HUD may require. HUD may require recipients of transitional housing assistance to monitor former residents, for a reasonable time set by HUD, to determine whether former residents made successful transitions to, and continue to reside in, permanent housing.

§ 840.310 Term of commitment and repayment of advance.

(a) *General.* All projects must be operated as transitional housing in accordance with this part for a term of at least 10 years from the date of initial occupancy.

(b) *Repayment of advance.* (1) The recipient of an acquisition/rehabilitation advance under § 840.105 must repay the advance in the amount prescribed under paragraph (b)(2) of this section and in accordance with the terms prescribed by HUD.

(2) The recipient must repay the full amount of the acquisition/rehabilitation advance if the project is used for transitional housing for less than 10 years following the date of initial occupancy. For each full year that the project is used for transitional housing following the expiration of this 10-year period, the amount that the recipient will be required to pay will be reduced by one tenth of the original advance. If the project is used for transitional housing for 20 years following the date of initial occupancy, the recipient will not be required to repay any portion of the acquisition/rehabilitation advance under this section.

(3) Upon the recipient's written request, HUD may determine that a project is no longer needed for use as transitional housing, and may approve an alternate use of the project for the direct benefit of lower income persons.

For the purposes of determining the amount of the recipient's repayment obligation, such a project will continue to be treated as transitional housing as long as it is used for the approved alternate purpose.

(c) *Successor-recipients.* A recipient may select a successor to provide transitional housing in accordance with the recipient's obligations under this part. A successor-recipient must be approved by HUD before operation of the project may be transferred. Any obligations for the repayment of advances and for the prevention of undue benefits may remain with the original recipient or may be transferred to the successor-recipient, depending on the terms of the HUD approval.

(d) *Calculation of term of commitment.* The 10-year operating term commences on the date of initial occupancy.

§ 840.312 Casualty insurance.

The recipient must obtain, and maintain in force, property casualty insurance, with HUD named as beneficiary, in an amount at least equal to the amount of the acquisition/rehabilitation advance or the moderate rehabilitation grant provided to the recipient.

§ 840.313 Eminent domain.

A recipient whose structure is taken by eminent domain must repay the acquisition/rehabilitation advance or the moderate rehabilitation grant provided to the recipient, to the extent that funds are available from the eminent domain proceeding.

§ 840.315 Prevention of undue benefits.

(a) *General.* If assistance in the form of an acquisition/rehabilitation advance or a moderate rehabilitation grant is provided for a project and the project is sold or otherwise disposed of during the 20 years following initial occupancy, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient from unduly benefitting from the sale or the disposition.

(b) *Exception.* This section does not apply to sales or dispositions that result in the continued use of the project for the direct benefit of lower income persons or where all proceeds from the sale or disposition are used to provide supportive housing.

§ 840.320 Resident rent.

Each homeless individual residing in transitional housing is required to pay as rent an amount determined in accordance with Section 3(a) of the United States Housing Act of 1937.

Under Section 3(a), each resident must pay as rent the highest of:

(a) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses);

(b) 10 percent of the family's monthly income; or

(c) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

As part of its technical assistance under § 840.120, HUD will provide successful applicants with information and assistance concerning the calculation of resident rent.

§ 840.325 Resident discharge.

(a) *Preemption.* No State or local law, ordinance, or regulation shall have any force or effect to the extent that it prohibits, or has the effect of prohibiting, recipients from discharging residents from transitional housing at the end of the HUD-approved limit on the stay of residents in the housing.

(b) *Resident contract.* The recipient must execute a contract with each resident individual or family before admission to transitional housing. The contract must provide that the resident's length of stay will be limited to a stated time period approved by HUD, and that no State or local law, ordinance, or regulation shall have any force or effect to the extent that it prohibits, or has the effect of prohibiting, the recipient from discharging the resident at the end of the stated time period. The contract may contain such other terms and conditions governing the relationship between the recipient and the resident as are consistent with this part and agreed upon by the recipient and the resident.

(c) *Notice of discharge at end of HUD-approved residency period.* Not less than 30 calendar days before the end of the HUD-approved limit on the stay of the resident, the recipient must give the resident written notice that he or she will be discharged from the transitional housing at the end of the residency period, and will not be permitted to remain in the project after that time. The notice must be personally served on the resident, must state the date of the proposed discharge, and must inform the resident that he or she may request review of the proposed discharge date. Any request for such review must be made not later than 10 calendar days before the end of the residency period.

and the review shall be limited to a determination of whether the recipient has calculated the resident's period of residence correctly.

(d) *Recipient review.* If the resident requests the recipient to review the discharge date contained in the notice, the recipient shall recompute the length of time that the individual or family has been a resident of the transitional housing and compare that period to the HUD-approved limit on residency. If the recipient determines that the discharge date in the notice is too early, the recipient shall withdraw the discharge notice and notify the resident of this action. Notice must be in writing and personally served upon the resident not later than five days before the discharge date in the notice of discharge. Withdrawal of a discharge notice under this clause shall not have any effect upon the recipient's service of any subsequent discharge notice on the resident.

§ 840.330 Applicability of other Federal requirements.

Use of assistance provided under this part must comply with the following additional requirements:

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to the Program are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of homeless persons, recipients serving a designated population of homeless persons are required, within the designated population, to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, and handicap.

(1) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-19) (Fair Housing Act) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(6) If the procedures that the recipient intends to use to make known the availability of the transitional housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, or handicap, who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that these persons are made aware of the availability of transitional housing opportunities. The recipient must also establish additional procedures that will ensure that interested persons can obtain information concerning the existence and location of services and facilities that are accessible to handicapped persons.

(b) *Environmental.* The National Environmental Policy Act of 1969, the related authorities in 24 CFR Part 50, and the Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601) are applicable to proposals under this program.

(c) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A-87 and A-102 (as set forth in 24 CFR Part 85) apply to the acceptance and use of assistance under the program by States, metropolitan cities, urban counties, governmental entities, and tribes and OMB Circular Nos. A-110 and A-122 apply to the acceptance and use of assistance by private nonprofit organizations, except that the requirements of 24 CFR 85.24 are modified by § 840.130, and the requirements of 24 CFR 85.31 are modified by §§ 840.310 and 840.315. Under § 840.130, program income is authorized to be used in accordance with 24 CFR 85.25(g)(2).

(d) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR Part 35 (except as superseded in paragraph (d)(2), below) apply to the program.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as

practicable, the hazards of lead-based paint poisoning with respect to structures for which assistance is provided under this program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to the program, the requirements prescribed in Subpart C of 24 CFR Part 35. The requirements of this paragraph apply to structures that will be occupied by children under seven years of age.

(ii) The following definitions apply to this paragraph (d):

Applicable surface means all intact and nonintact exterior and interior painted surfaces of a residential structure.

Chewable surface means all chewable, protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age: e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means excessive absorption of lead: i.e., a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

(iii) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, the applicant must inspect the structure for defective paint surfaces before it submits an application. Recipients must inspect assisted structures at least annually during the term of their operating commitment to HUD. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the initial inspection must be completed before initial occupancy of the project. Correction of defective paint conditions discovered at periodic inspection must be completed within 30 days of their discovery. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(iv) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, if the recipient is presented with test results that indicate that a child under the age

of seven years occupies the structure and has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) In lieu of the procedures set forth in the preceding clause, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vi) The recipient must take appropriate action to protect tenants from hazards associated with abatement procedures.

(vii) The recipient must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the recipient must keep the test results and, if applicable, the certification of treatment, indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this section, these surfaces do not have to be tested or treated at any subsequent time.

(e) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circulars A-102 and 24 CFR Part 85, no person:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities or

(2) Who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Audit.* The financial management systems used by States, metropolitan cities, urban counties, governmental entities and tribes that are recipients under this program must provide for audits in accordance with 24 CFR Part 44. Private nonprofit organization recipients are subject to the audit requirements of OMB Circular A-110. HUD may perform or require further and additional audits as it finds necessary or appropriate.

(h) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR Part 52 are not applicable to applications under this program.

(i) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a-276a-5) do not apply to the program.

Subpart F—Administration

§ 840.400 Obligation of funds, funding amendments, and deobligation.

(a) *Obligation of funds.* When HUD selects an application for funding and notifies the recipient, it will obligate funds to cover the amount of the approved acquisition/rehabilitation advance, moderate rehabilitation grant and (for up to five years) annual operating costs.

(b) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated for the acquisition/rehabilitation advance, the moderate rehabilitation grant or the annual operating costs.

(c) *Deobligation.* (1) HUD may deobligate amounts for the acquisition/rehabilitation advance or the moderate rehabilitation grant:

(i) If the actual total costs of acquisition, substantial rehabilitation, acquisition and rehabilitation, or moderate rehabilitation, are less than the total cost anticipated in the application; or

(ii) If proposed acquisition and rehabilitation activities are not begun or completed within a reasonable time after selection.

(2)(i) HUD may deobligate the amounts for annual operating costs in any year following the first year of operations, based on the recipient's actual operating cost experience. Additionally, if a recipient's operations

generate a substantial amount of resident rent (see § 840.320), HUD may adjust the operating costs allowed under the grant agreement downward, to the extent of the rent received in excess of that anticipated and budgeted in the application.

(ii) HUD may deobligate the amounts for annual operating costs if the proposed transitional housing operations are not begun within a reasonable time following selection.

(3) If, as a result of an audit, HUD determines that the recipient has expended funds for uses that are ineligible under this part, HUD may adjust or deobligate funding amounts, as appropriate, to recover the ineligible costs.

(4) The grant agreement will set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

(5) HUD may:

(i) Readvertise the availability of funds that have been deobligated under this section in a notice of fund availability under § 840.200; or

(ii) Reconsider applications that were submitted in response to the most recently published notice of fund availability, and select applications for funding with deobligated funds. Such selections will be made in accordance with §§ 840.207-840.225.

2. Part 841 is added to read as follows:

PART 841—PERMANENT HOUSING FOR HANDICAPPED HOMELESS PERSONS

Subpart A—General

Sec.

841.1 Applicability and scope.

841.5 Definitions.

Subpart B—Assistance Provided

841.100 Types of assistance.

841.105 Acquisition/rehabilitation advances.

841.110 Moderate rehabilitation grants.

841.115 Technical assistance.

841.120 Limitations on use of assistance.

841.125 Matching requirements.

841.130 Assistance under other HUD programs.

Subpart C—Comprehensive Homeless Assistance Plan

841.150 Comprehensive Homeless Assistance Plan.

Subpart D—Application and Selection Process

841.200 Notice of fund availability.

841.205 Application requirements.

841.207 Selection process.

841.210 Threshold requirements.

841.215 Ranking criteria.

841.225 Final selection.

Subpart E—Program Requirements

- 841.300 Grant agreement.
- 841.305 Required agreements.
- 841.310 Term of commitment and repayment of advance.
- 841.312 Casualty insurance.
- 841.313 Eminent domain.
- 841.315 Prevention of undue benefits.
- 841.320 Resident rent.
- 841.325 Number of residents.
- 841.330 Applicability of other Federal requirements.

Subpart F—Administration

- 841.400 Obligation of funds, funding amendments, and deobligation.

Authority: Section 426, Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General**§ 841.1 Applicability and scope.**

(a) *General.* The Supportive Housing Demonstration program contained in Subtitle C of Title IV of the Stewart B. McKinney Homeless Assistance Act is designed to develop innovative approaches for providing supportive housing, especially to deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons. It is designed to determine:

(1) The cost of acquisition, rehabilitation, acquisition and rehabilitation, or leasing of existing structures for the provision of supportive housing;

(2) The cost of operating such housing and providing supportive services to the residents of such housing;

(3) The social, financial, and other advantages of such housing as a means of assisting homeless individuals; and

(4) The lessons that the provision of supportive housing might have for the design and implementation of housing programs that serve homeless individuals and families with special needs, particularly deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons.

A central purpose of the Supportive Housing Demonstration program is to provide supportive housing for deinstitutionalized homeless individuals and other homeless individuals with mental disabilities.

(b) The Supportive Housing Demonstration program consists of two components: permanent housing for handicapped homeless persons and transitional housing. This part implements the program for permanent housing for handicapped homeless

persons. Part 840 implements the transitional housing program.

§ 841.5 Definitions.

As used in this part:

Applicant means the State in which permanent housing for handicapped homeless persons is to be located.

Comprehensive Homeless Assistance Plan or Plan means the Comprehensive Homeless Assistance Plan established by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987).

Date of initial occupancy means the date that the project is initially occupied by a homeless person for whom assistance is provided under this part.

Handicapped homeless person means a handicapped person who:

- (a) Is a homeless individual;
- (b) Is currently not a homeless individual but who is at risk of becoming a homeless individual; or
- (c) Has been a resident of transitional housing assisted under the Transitional Housing Demonstration program guidelines published June 9, 1987 (52 FR 21743).

This term may include a homeless family, if the head of the family (or the spouse of the head of the family) is a handicapped homeless person.

Handicapped or Handicapped person means any individual having an impairment that is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that the ability to live independently could be improved by a stable residential situation. This term includes:

(a) An individual who is developmentally disabled, i.e., an individual who has a severe chronic disability that:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age 22;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (i) Self-care,
 - (ii) Receptive and expressive language,
 - (iii) Learning,
 - (iv) Mobility,
 - (v) Self-direction,
 - (vi) Capacity for independent living, and
 - (vii) Economic self-sufficiency; and
- (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of

lifelong or extended duration and are individually planned and coordinated.

(b) An individual who is chronically mentally ill, i.e., an individual who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (e.g., by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, or recreation), and whose impairment could be improved by more suitable housing conditions.

(c) A handicapped person who also suffers from alcoholism or drug addiction.

Homeless means:

(a) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(b) An individual or family that has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD means the Department of Housing and Urban Development.

Moderate rehabilitation means the rehabilitation of a project that involves a total HUD expenditure that does not exceed the limitations described under § 841.110.

Permanent housing for handicapped homeless persons or permanent housing means a project assisted under this part that provides community-based, long-term housing and supportive services for not more than eight handicapped homeless persons and that is carried out by a project sponsor. All or part of the supportive services may be provided directly by the recipient or the project sponsor, or by arrangement with public or private service providers.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

- (a) Have a voluntary board;
- (b)(1) Have a functioning accounting system that is operated in accordance

with generally accepted accounting principles, or

(2) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(c) Practice nondiscrimination in the provision of assistance under the permanent housing program in accordance with the authorities described in § 841.330(a).

Project means one or more existing structures, or parts of one or more existing structures, owned or leased by the project sponsor (or by the recipient) for use in connection with permanent housing for handicapped homeless persons. The project must be:

(a) A group home designed solely for housing handicapped homeless persons, or

(b) Dwelling units in a rental apartment building, a condominium project or a cooperative project.

Project sponsor means a private nonprofit organization that the Governor or other chief executive official of the applicant approves as to financial responsibility. The project sponsor must operate the permanent housing for handicapped homeless persons, and must provide (or coordinate the provision of) supportive services to the residents of such housing.

Recipient means the applicant that executes a grant agreement with HUD. The recipient provides assistance to the project sponsor for the operation of permanent housing for handicapped homeless persons and facilitates the provision of necessary supportive services to the residents of the permanent housing.

Rehabilitation means labor, materials, tools, and other costs of improving structures to a level that meets or exceeds applicable State and local government health and safety standards. Rehabilitation includes repairs directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, and improvement through alterations or additions to, or enhancement of, existing structures, including improvements to increase the efficient use of energy in structures. Rehabilitation does not include minor or routine repairs or cosmetic repairs or improvements.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any

other territory or possession of the United States.

Substantial rehabilitation means the rehabilitation of a project that involves a total HUD expenditure in excess of the limitations described under § 841.110.

Supportive services means services provided to residents of permanent housing. Supportive services must be proposed by the applicant in its application and approved by HUD; must address the special needs of the handicapped homeless persons to be served by the project; and must assist in accomplishing the purposes of permanent housing. Supportive services may include:

(a) Medical and psychological counseling and supervision;

(b) Employment counseling;

(c) Nutritional counseling;

(d) Assistance in obtaining other Federal, State, and local assistance available for residents of permanent housing facilities, including mental health benefits; employment counseling; medical assistance; Veterans' benefits; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps; and

(e) Other services, such as child care, transportation, job placement and job training.

Subpart B—Assistance Provided

§ 841.100 Types of assistance.

(a) **Types of assistance available.** Three types of assistance are available for permanent housing for handicapped homeless persons: acquisition/rehabilitation advances, moderate rehabilitation grants, and technical assistance.

(b) **Eligibility for more than one type of assistance.** For each project assisted under this part, the applicant may be eligible for either an acquisition/rehabilitation advance or a moderate rehabilitation grant, but not both. Technical assistance will be available only in connection with an acquisition/rehabilitation advance or a moderate rehabilitation grant.

§ 841.105 Acquisition/rehabilitation advances.

(a) **Use.** HUD will advance sums to recipients to defray the cost of the acquisition, substantial rehabilitation, or acquisition and rehabilitation of existing structures selected by the recipients for use in the provision of permanent housing for handicapped homeless persons.

(b) **Amount.** The acquisition/rehabilitation advance may not exceed the lesser of

(1) \$200,000; or

(2) 50 percent of the aggregate cost of acquisition, substantial rehabilitation, or acquisition and rehabilitation (see § 841.125 for a full discussion of the 50 percent matching requirement).

(c) **Terms of the advance.** Advances are interest-free, and if the conditions described in § 841.310 are met, are not subject to repayment. The sale or disposition of a structure acquired or rehabilitated with an advance is subject to the requirements of § 841.315.

§ 841.110 Moderate rehabilitation grants.

(a) **Use.** HUD will make grants to recipients to defray the cost of rehabilitation of existing structures selected by the recipients for use in the provision of permanent housing for handicapped homeless persons.

(b) **Amount.** (1) The moderate rehabilitation grant may not exceed the lesser of:

(i) The project limit; or

(ii) 50 percent of the cost of rehabilitation (see § 841.125 for a full discussion of the 50 percent matching requirement).

(2) For purposes of this section, "project limit" means the amount determined by HUD by multiplying the number of units of each unit type in the project times the unit cost for that unit. The cumulative total for all unit types is the project limit. The unit cost limits are:

(i) \$5,000:

(A) Per bedroom unit, in single room occupancy housing (i.e., a unit which contains no sanitary facilities or food preparation facilities, or which contains one but not both types of facilities, and which is suitable for occupancy by a single individual);

(B) Per bedroom unit, in a group home; or

(C) Per unit without a bedroom, in other types of projects; and

(ii) \$7,000 per unit with one or more bedrooms, in other types of projects.

(c) **Terms of the grant.** The sale or disposition of a structure rehabilitated with a grant under this section is subject to the requirements of § 841.315.

§ 841.115 Technical assistance.

Technical assistance will be offered only in connection with an award of funds under § 841.105 or § 841.110. Technical assistance is offered to recipients through HUD field offices in such matters as the computation of resident rent under § 841.320, compliance with other Federal requirements under § 841.330, and

engineering recommendations and other advice on rehabilitation plans and work write-ups. HUD will also facilitate the exchange of information among recipients and program sponsors, and help recipients and program sponsors to learn from the experience of other participants in the program.

§ 841.120 Limitations on use of assistance.

(a) *Funding of existing housing facilities and programs.* (1) HUD will not provide acquisition/rehabilitation advances or moderate rehabilitation grants for existing facilities or programs that currently serve homeless persons, unless the applicant proposes:

(i) A substantial increase in the number of handicapped homeless persons for whom permanent housing will be provided (subject to the limitation on the number of residents contained in § 841.325); or

(ii) A substantial change in the use of existing facilities, e.g., if existing facilities for the homeless that are not currently used for permanent housing (such as an emergency shelter for the homeless) will be used to provide permanent housing, or if an applicant currently providing permanent housing for one population of handicapped homeless persons proposes to serve an additional or alternative segment of the handicapped homeless population.

(2) If an application seeking funding of existing housing facilities and programs is selected for funding, assistance under this part will be limited to 50 percent of the cost of acquisition/rehabilitation or 50 percent of the cost of moderate rehabilitation, attributable to the increase number of handicapped homeless persons for whom permanent housing would be provided, the increased level of supportive services to be provided, or the change in use.

(b) *Maintenance of effort.* No assistance received under this part (or any State or local government funds used to supplement this assistance) may be used to replace funds provided in the State under any State or local government assistance program, if the funds provided under the State or local government assistance program were used to assist handicapped persons, homeless individuals, or handicapped homeless persons during the calendar year preceding the date of the application, or were designated for such use through an official action of the applicable governmental entity during the calendar year preceding the date of the application.

(c) *Leases.* (1) Acquisition/rehabilitation advances are not

available to defray the costs of acquiring a lease on existing property.

(2) Acquisition/rehabilitation advances and moderate rehabilitation grants are available for the rehabilitation of leased property. To receive an acquisition/rehabilitation advance or a moderate rehabilitation grant, the lease must run for a term of at least 10 years after the date of initial occupancy of the housing.

(d) *New construction.* Assistance under this part may not be used for the new construction of housing. Assistance is limited to permanent housing provided in existing structures.

(e) *Primarily religious organizations—*

(1) *Provision of assistance.* (i) HUD will not provide assistance to a recipient that will use a project sponsor that is a primarily religious organization, unless the primarily religious organization agrees to provide housing and supportive services in a manner that is free from religious influence and in accordance with other conditions described in the grant agreement.

(ii) HUD will not provide assistance to a recipient that will use a project sponsor that is a primarily religious organization, if the assistance will be used to acquire a structure to be owned by the project sponsor or to rehabilitate a structure owned by the project sponsor.

(2) *Permanent housing provided in structures owned by primarily religious organizations.* The acquisition/rehabilitation advance and the moderate rehabilitation grant may not be used to rehabilitate a structure that is owned by a primarily religious organization, unless:

(i) The structure (or portion of the structure) that is to be rehabilitated with the HUD assistance has been leased to a wholly secular private nonprofit organization that will serve as the project sponsor, or to the recipient;

(ii) The HUD assistance will be provided to the project sponsor or to the recipient to make the improvements, rather than to the primarily religious organization;

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion;

(iv) The lease payments provided to the primarily religious organization do not exceed the fair market rent of the structure without the rehabilitation;

(v) The cost of improvements that benefit any portion of the structure that is not used for the provision of permanent housing assisted under this part will be allocated to and paid for by the primarily religious organization; and

(vi) The primarily religious organization agrees that if the project sponsor or the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the project sponsor or recipient that will remit the amount to HUD.

(3) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.* (i) If a primarily religious organization is foreclosed from direct participation as a project sponsor under the requirements set forth in paragraph (e)(2) of this section, the primarily religious organization may establish a wholly secular private nonprofit organization to serve as the project sponsor under this part.

(A) The wholly secular organization must agree to provide housing and supportive services in a manner that is free from religious influences and in accordance with other terms described in the grant agreement.

(B) The wholly secular organization may enter into a contract with the primarily religious organization to provide supportive services for the project. In such a case, the primarily religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with conditions prescribed by HUD.

(C) The acquisition/rehabilitation advance and the moderate rehabilitation grant are subject to the requirements of paragraph (2) of this section.

(ii) HUD will not require the primarily religious organization to establish the wholly secular organization before the selection of the application. In such a case, the applicant must name the wholly secular organization as the project sponsor in the application. In determining whether the wholly secular organization is financially responsible, the applicant may consider the primarily religious organization's financial responsibility and its commitment to provide appropriate resources to the project sponsor upon its formation, in addition to the other factors listed under § 841.210(b)(2)(ii)(b). The project sponsor's capacity to carry out activities under §§ 841.210(b)(2)(iii) and 841.215(b)(1), may be based on the primarily religious organization's capacity and its commitment to provide appropriate resources to the project sponsor after its formation. The requirement that the recipient or project sponsor must have site control

(§ 841.210(b)(4)(v)(A), may be satisfied if the applicant demonstrates that the primarily religious organization has site control and has a commitment to transfer control of the site to the recipient or the project sponsor following selection. Since the wholly secular organization will not be in existence at the time of the application, it will be required to demonstrate that it meets the definition of private nonprofit organization and has the appropriate legal authority to participate in the program following selection (see § 841.210(b)(2) (i) and (iv)). If such an application is selected for funding, the obligation of funds will be conditioned upon the compliance with these requirements.

(f) *Structures used for multiple purposes.* Structures used to provide permanent housing may also be used for other purposes. For example, a structure may contain facilities for an emergency shelter as well as permanent housing, may be used to provide supportive services to the public at large, or may include commercial space. Under these circumstances, however, the acquisition/rehabilitation advance and the moderate rehabilitation grant will be available only in proportion to the use of the structure for permanent housing.

(g) *Administrative costs.* No more than five percent of an acquisition/rehabilitation advance or moderate rehabilitation grant provided under this part may be used for administrative purposes.

§ 841.125 Matching requirements.

(a) *General.* (1) The recipient must match the assistance provided by HUD with at least an equal amount of State or local government funds that will be used solely for acquisition, rehabilitation or moderate rehabilitation. At least 50 percent of the recipient's matching contribution must be State government funds.

(2) HUD may waive all or part of the requirement that at least 50 percent of the recipient's matching contribution must be State government funds, if HUD determines that:

(A) The State is experiencing a severe financial hardship that makes it unable to provide 50 percent of the recipient's matching contribution and

(B) The local governments of the areas to be served by the project will contribute additional funds in an aggregate amount equal to the amount of the State contribution waived by HUD.

(3) Except for funds made available to the State or local government under HUD's Community Development Block Grant program, funds provided by the Federal government under federally

assisted programs are not State or local government funds, and may not be used to compute the State or local government matching contribution.

(b) *Assistance categories.* The recipient must fulfill the matching requirement for the acquisition/rehabilitation advance and the moderate rehabilitation grant. No match is required for technical assistance.

(c) *"In-kind" contributions.* Matching contributions under this section must be State or local government funds. "In-kind" contributions are excluded from the matching computation.

(d) *Other requirements.* State or local government funds used in the matching contribution are subject to the requirements governing the funding of existing housing facilities and programs and the maintenance of effort requirements described at §§ 841.120 (a) and (b).

§ 841.130 Assistance under other HUD programs.

(a) *Supplemental assistance.* HUD will permit the use of additional assistance for permanent housing for handicapped homeless persons in connection with the program of Supplemental Assistance for Facilities to Assist the Homeless contained in Subtitle D of Title IV of the Stewart B. McKinney Homeless Assistance Act.

(b) *Ineligible projects.* HUD will not assist a project under this part if the project involves a structure that is assisted, or residents of the structure will receive assistance, under the United States Housing Act of 1937; section 202 of the Housing Act of 1959; section 221(d)(3)(B)(MIR) or section 236 of the National Housing Act; or section 101 of the Housing and Urban Development Act.

(c) *HUD-owned properties.* HUD, in cooperation with PHAs and local government, will make HUD-owned single family properties in its inventory available to parties for purchase for use in connection with permanent housing for handicapped homeless persons. To obtain these properties, parties may request a listing of available properties from the HUD Field Office, Property Disposition Branch. If a party wishes to purchase a property or properties, it must request the PHA or unit of local government to enter into a lease/option agreement with HUD. Under the terms of the agreement, HUD will lease the property to the PHA or unit of local government for six months for one dollar. The lease/option agreement will state that the PHA or unit of local government may purchase the property at a stated price during the lease period, and will require the PHA or unit of local

government to assign all rights under the agreement to the party. Applicants demonstrating an assignment of rights under a lease/option agreement at the time their application is filed will be regarded as having site control of the property under § 841.210(b)(4)(v)(A). If the option is not exercised, the lease/option agreement will expire at the end of six months, and the property will be returned to HUD's inventory.

Subpart C—Comprehensive Homeless Assistance Plan

§ 841.150 Comprehensive Homeless Assistance Plan.

(a) *Prohibition of assistance.* Assistance under this part may not be provided to an applicant, unless the applicant has a HUD-approved Comprehensive Homeless Assistance Plan.

(b) *Notification of Plan requirements.* HUD will publish the requirements that pertain to the Comprehensive Homeless Assistance Plan in the Federal Register, as necessary. Prospective applicants should familiarize themselves with these requirements.

Subpart D—Application and Selection Process

§ 841.200 Notice of fund availability.

When funds are made available for assistance for permanent housing for handicapped homeless persons, HUD will publish a notice of fund availability in the Federal Register. The notice will:

(a) Explain how application packages providing specific application requirements and guidance may be obtained;

(b) Specify the time and the place for submitting completed applications;

(c) State the amount of funding available under the notice; and

(d) Provide other appropriate program information and guidance.

§ 841.205 Application requirements.

(a) *General.* Applicants must submit applications for assistance under this part in the form and within the time periods established by HUD.

(b) *Application requirements.* At a minimum, HUD will require applications to include:

(1) Applicant and project sponsor data (identity, evidence of eligibility, description of project sponsor's past experience, and legal authority to submit the application and to operate the proposed housing);

(2) A description of the size and characteristics of the handicapped homeless population that will occupy the permanent housing (including a

description of the handicapped homeless population to be served, number of individuals to be served in the project, and supportive services required by the proposed residents);

(3) A description of the proposed project, including:

(i) Information regarding the structure to be used (including site control and zoning data, information concerning the consistency of the proposal with local government plans, and a description of the structure and of any proposed rehabilitation);

(ii) A narrative description of the proposed operations (including the supportive services to be offered to the residents, the method that will be used to provide or coordinate the provision of such services, and procedures for resident selection and assessment);

(4) A certification of consistency with the applicable Comprehensive Homeless Assistance Plan as described under § 841.210(b)(4)(vi)(B);

(5) Project financial data (amount of assistance requested, a description of the State and local government funds that are expected to be made available to comply with the matching requirements of § 841.125, and a certification or a request for waiver as described under § 841.210(b)(3)(ii));

(6) Assurances satisfactory to HUD that the project will be operated for not less than 10 years in accordance with this part;

(7) A letter of participation as described in § 841.210(b)(2)(ii)(A), an assessment of how the proposal will meet the needs of handicapped homeless persons as described in § 841.210(b)(4)(i)(B), the designation of State agencies as described in § 841.210(b)(4)(ii)(D), and a maintenance of effort certification as described in § 841.210(b)(5);

(8) A certification that the project sponsor has agreed to fulfill the requirements set forth in § 841.305; and

(9) Other data as prescribed by HUD.

§ 841.207 Selection process.

The selection process for applications for assistance under this part has three stages: (a) the threshold stage (see § 841.210); (b) The ranking stage (see § 841.215); and (c) The final selection stage (see § 841.225).

§ 841.210 Threshold requirements.

(a) *General.* To be eligible for evaluation under the ranking criteria set out in § 841.215, applications must meet each of the threshold criteria described below (as modified for wholly secular private nonprofit organizations established by primarily religious organizations under § 841.120(e)). If

HUD determines that an application fails to meet the threshold criteria in paragraph (b)(3) (matching), (b)(4)(v)(A) (site control), or (b)(4)(v)(B) (zoning) of this section, that these are the only deficiencies in the application under the threshold criteria, and that the deficiencies are correctable, HUD may contact the applicant, identify the deficiencies, explain how the deficiencies can be corrected, and require the applicant to correct the deficiencies. HUD will establish a deadline for the submission of the additional information that will permit the Department to meet its deadlines for final selection. Applications that fail to meet all threshold criteria, including those that have not been corrected within any additional time provided by HUD, will not be eligible for assistance under this part.

(b) *Threshold criteria.* The threshold criteria are:

(1) *Form, time, and adequacy of the application.* The application must be filed in the application form prescribed by HUD under § 841.205 and within the time period established by HUD in the notice of funds availability under § 841.200.

(2) *Applicant and project sponsor.*—(i) *Eligibility to receive assistance.* The applicant must be the State in which the permanent housing is to be located and must demonstrate that the project sponsor is a private nonprofit organization.

(ii) *Financial responsibility.* (A) HUD has determined, for purposes of this part, that all applicants are financially responsible. Applicants, however, must provide a letter of participation from the Governor or other chief executive officer of the State, containing assurances that the applicant will promptly transmit assistance to the project sponsor and will facilitate the provision of necessary supportive services to the residents of the project.

(B) The applicant must demonstrate that the project sponsor has been approved by the Governor or other chief executive official of the State as to financial responsibility. In making its determination of financial responsibility, the applicant must consider factors such as the past financial history of the project sponsor, its current and anticipated financial outlook, the amount of funding that will be committed under the proposal, and its other financial responsibilities.

(iii) *Capacity.* Applicants must demonstrate that the project sponsor has the ability to carry out activities under this part within a reasonable time after execution of the grant agreement with HUD, and in a successful manner.

In making this determination, HUD will consider the extent and quality of the project sponsor's past experience in establishing and operating housing or in providing or coordinating supportive services. HUD also will consider the ability of the project sponsor's personnel to perform administrative, managerial, and operational functions necessary to the successful development and operation of permanent housing.

(iv) *Legal authority.* (A) Each applicant must demonstrate that it and the project sponsor have the legal authority to participate in the program and to carry out activities in accordance with program requirements and the requirements of other applicable Federal law.

(B)(1) Each applicant must certify that a resolution, motion, or similar action has been duly adopted or passed as an official act by the governing body of the applicant authorizing the submission of the application under this part; or must certify, and provide supporting documentation, that the applicant is empowered under State or local laws to carry out program activities without obtaining the approval of their governing body.

(2) Each project sponsor must certify that a resolution, motion, or similar action has been duly adopted or passed as an official act by the governing body of the project sponsor authorizing the submission of the application under this part.

(3) *Matching.*—(i) *Certification.* Each applicant must provide a certification stating:

(A) That it will match the amount of the assistance to be provided under this part with at least an equal amount of State or local government funds that will be used solely for acquisition or rehabilitation, and

(B) That at least 50 percent of this matching contribution will be made up of State government funds.

The applicant must also indicate the extent to which it will supplement assistance under this part with amounts in addition to those specified in the preceding paragraph.

(ii) *Waiver.* If the applicant cannot certify that at least 50 percent of the matching contribution will be composed of State government funds, it must demonstrate that it is eligible for a waiver of this requirement under § 841.125(a)(2).

(4) *Proposed housing and supportive services.*—(i) *Need.* (A) The applicant must demonstrate that an unmet need for the proposed permanent housing exists in the area to be served and that this need is likely to continue through

the term of the commitment to HUD. Need may be demonstrated by information such as:

(1) Estimates, based on past experience in the community, of unmet demand for the proposed permanent housing by the handicapped homeless persons to be served;

(2) Present need for the proposed permanent housing, based on estimates of the population of handicapped homeless persons to be served; or

(3) Projections of future need for the proposed permanent housing.

Applicants may use relevant information contained in the Comprehensive Homeless Assistance Plan to demonstrate an unmet need for the proposed permanent housing.

(B) Each applicant must provide an assessment of how the proposed project will meet the needs of handicapped homeless persons in the State.

(ii) Supportive services.

(A) Where supportive services are to be provided through private or public organizations other than the applicant or the project sponsor, the applicant must secure a letter of intent from each organization, indicating its willingness and ability to provide the services to the residents of the housing, and must attach these letters to the application.

(B) Applicants must designate the State agency that has primary responsibility for providing services to the handicapped and that will assist the State housing finance agency (or other state agency) in fulfilling the State's responsibilities under this part. If the agency designated is not the agency responsible for the overall administration of the project, the applicant must also designate the administering agency.

(iii) Adequacy of the proposed housing. (A) Applicants must demonstrate that the proposed structures and sites are appropriate for the provision of housing and supportive services for the handicapped homeless population proposed to be served. When determining whether a structure will be suitable for the provision of permanent housing, HUD will consider whether the structures are designed to permit the provision of proposed on-site supportive services, and whether any proposed off-site supportive services are readily accessible.

(B) The applicant must demonstrate that the design of the project and its location within a community will ensure that the housing will be provided in a residential, rather than an institutional, setting and that the project will be integrated into the neighborhood in which it is located. If the permanent housing involves a group home, no more

than one home may be located on one site, and no home may be located on a site that is contiguous to another site containing such a home.

(iv) Limitation on number of residents. The applicant must demonstrate that the number of residents served by the project will not exceed the limitation contained in § 841.325.

(v) Siting and zoning. Except as provided in paragraph (a) of this section, applicants must meet the following three siting and zoning requirements at the time of the application:

(A) The applicant must demonstrate that it or the project sponsor has control of the site involved. For example, the applicant may demonstrate that it (or the project sponsor) owns or has an option to purchase, or leases or has an option to lease, the structure involved.

(B) The applicant must demonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within 4 months following the submission of the application.

(C) The applicant must submit a statement that the proposed project is not located in any 100-year floodplain, as designated by maps prepared by the Federal Emergency Management Agency (FEMA). If 50 percent or more of the living space in the structure is designed for residents with mobility impairments, the applicant must submit a statement that the project is not located in any 500-year floodplain, as designated on FEMA maps. While applications that fail to meet the requirements of subparagraphs (A) and (B) of this paragraph (b)(4)(v) may be corrected after the submission of the application in accordance with paragraph (a) of this section above, applications that do not contain the required floodplain statements will not be eligible for assistance under this part.

(vi) Consistency with government plans.

(A) Consistency with local government plans. Applicants must furnish a written statement from the unit of general local government in which the proposed permanent housing is proposed to be located, indicating that the proposed use of the structure and site for permanent housing is not inconsistent with any plan of the local government that may have an effect on the use of the structure and site for this

purpose. This requirement is satisfied if the applicant demonstrates that it made a written request to the unit of local government for the statement and has not received the statement within 30 days of the request. (Applicants must immediately forward to HUD any written statement received from the unit of local government after the expiration of this 30-day period.)

(B) Consistency with Comprehensive Homeless Assistance Plan. Applicants must provide a certification from the State official responsible for submitting the Comprehensive Homeless Assistance Plan, stating that the proposed project is consistent with the Plan.

(vii) Displacement. Each applicant must certify that its proposed activities will not result in the displacement of any person or entity. HUD will not fund applications that will cause any individual, family, partnership, corporation, or association to move from real property or to move its personal property from real property because of an actual or impending acquisition or rehabilitation, in whole or in part, for a project. Displacement does not include:

(A) A move by a residential tenant-occupant to a suitable dwelling unit within the same building or within the same site, provided that all out-of-pocket expenses related to the move are reimbursed by the recipient; or

(B) A move by an owner-occupant who has voluntarily sold his or her real property after being informed in writing by the applicant that the applicant would not acquire the property if a mutually satisfactory agreement of sale could not be reached. In such a case, however, a move by a tenant-occupant of the real property (other than by the owner) may constitute displacement. (For further information on such owner-occupant sales, see 24 CFR Part 42, Appendix A, 24 CFR § 42.101(a).)

(5) Maintenance of effort. Each applicant must certify that the use of assistance received under this part (and State or local government funds used to supplement this assistance) complies with § 841.120(b).

(6) Proposal feasibility. Each applicant must demonstrate that its proposal, when viewed as a whole, is operationally feasible and provides adequate housing and supportive services to serve the purposes of the permanent housing program.

(7) Environmental review. (i) HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's

implementing regulations at 24 CFR Part 50. Any application that requires an Environmental Impact Statement (EIS) (generally, those applications that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR Part 50, Subpart E) will not pass threshold review and will not be eligible for assistance under this part.

(ii) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures are taken to mitigate environmental impacts. (See *e.g.*, 24 CFR Part 51). If such an application passes threshold review, HUD will consider the anticipated time delays in adopting appropriate impact mitigation measures in the ranking stage of the selection process. The environmental review may also well reveal information not contained in the application that may have relevance to the selection process. HUD will consider such information in the selection process.

§ 841.215 Ranking criteria.

(a) *In general.* Applications that fulfill each of the threshold requirements of § 841.210 will be assigned a rating score and will be placed in ranked order, based upon the criteria described in paragraph (b) of this section.

(b) *Criteria.* Applications will be assigned a rating and will be ranked, based upon the following criteria:

(1) *Project sponsor capacity.* HUD will consider the project sponsor's relative ability to carry out activities under the program within a reasonable time, and in a successful manner, after the execution of the grant agreement with HUD. The factors HUD will consider in making this judgment are discussed in § 841.210(b)(2)(iii). HUD will assign the greatest number of points under this criterion to applications involving project sponsors that have experience in establishing and operating permanent housing for handicapped homeless persons and in providing or coordinating supportive services for its residents, and that demonstrate, on the basis of prior experience, the greatest ability to carry out activities under the program expeditiously and successfully.

(2) *Innovative quality of proposal.* HUD will consider the innovative quality of the proposal in providing permanent housing and supportive services for handicapped homeless persons. In assessing an application under this factor, HUD will consider the degree to which the applicant demonstrates that:

(i) The proposal uses a new or unusual approach that holds promise of successfully providing permanent housing and supportive services to handicapped homeless persons.

(ii) The new or unusual approach that the applicant will use would be replicable by others.

(3) *Matching.* HUD will consider the extent to which the applicant proposes to match the amount of assistance to be provided by HUD with more than an equal amount of funds from State or local governments. Requirements for matching amounts are discussed at §§ 841.125 and 841.210(b)(3).

(4) *Cost effectiveness.* HUD will consider the extent to which the applicant's proposed costs in acquiring or rehabilitating housing under the program (i) are reasonable in relation to the rehabilitation performed and the properties acquired; and (ii) are effective in accomplishing the purposes of the project.

(5) *Project quality.* HUD will consider the extent to which the project will meet the needs of handicapped homeless persons in the State (as described in the State's assessment of needs submitted under § 841.210(b)(4)(i)(B)). HUD will assign the greatest number of points under this criterion to applications that will best provide permanent housing and supportive services addressing the needs of handicapped homeless persons, as identified in the assessment.

§ 841.225 Final selection.

In the final stage of the selection process, the highest-ranked applications will be considered for final selection in accordance with their rank order, as determined under § 841.215. If the top-rated applications under the ranking criteria described above involve projects that predominantly serve one geographic area or primarily serve one type of handicapped homeless population, HUD may substitute one or more other highly-rated applications to ensure reasonable variety in the demonstration.

Subpart E—Program Requirements

§ 841.300 Grant agreement.

(a) *General.* The duty to provide permanent housing in accordance with the requirements of this part will be incorporated in a grant agreement executed by HUD and the recipient.

(b) *Enforcement.* HUD will enforce the obligations in the grant agreement through such action as may be appropriate. In addition, for structures owned or leased by private nonprofit organizations, restrictions regarding the

use of the structures will be contained in covenants recorded in the land records of the jurisdiction in which the structure is located.

§ 841.305 Required agreements

Each recipient of assistance for permanent housing for handicapped homeless persons must require the project sponsor to agree:

(a) To operate a project providing permanent housing in accordance with this part.

(b) To conduct an ongoing assessment of the supportive services required by the residents of the project.

(c) To provide such residential supervision as HUD determines is necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate permanent housing. Such residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide, or to supervise the provision of supportive services to the residents of permanent housing.

(d) To use the structure for which assistance is provided as permanent housing for not less than 10 years following the date of initial occupancy.

(e) To provide safe and sanitary housing, and to comply with all State and local housing codes, licensing requirements, and other requirements regarding the condition of the structure and the operation of the permanent housing.

(f) To keep any records and make any reports that HUD may require.

§ 841.310 Term of commitment and repayment of advance.

(a) *General.* All projects must be operated as permanent housing in accordance with this part for a term of at least 10 years from the date of initial occupancy.

(b) *Repayment of advance.* (1) The recipient of an acquisition/rehabilitation advance under § 841.105 must repay the advance in the amount prescribed under paragraph (b)(2) of this section and in accordance with the terms prescribed by HUD.

(2) The recipient must repay the full amount of the acquisition/rehabilitation advance if the project is used for permanent housing for less than 10 years following the date of initial occupancy. For each full year that the project is used for permanent housing following the expiration of this 10-year period, the amount that the recipient will be required to pay will be reduced

by one-tenth of the original advance. If the project is used for permanent housing for 20 years following the date of initial occupancy, the recipient will not be required to repay any portion of the acquisition/rehabilitation advance under this section.

(3) Upon the recipient's written request, HUD may determine that a project is no longer needed for use as permanent housing, and may approve an alternate use of the project for the direct benefit of lower income persons. For the purposes of determining the amount of the recipient's repayment obligation, such a project will continue to be treated as permanent housing as long as it is used for the approved alternate purpose.

(c) *Successors.* A recipient may select a new project sponsor to operate the housing in accordance with the project sponsor's obligations under this part. The successor-project sponsor must be approved by HUD before operations of the project may be transferred.

(d) *Calculation of term of commitment.* The 10-year operating term commences on the date of initial occupancy.

§ 841.312 Casualty insurance.

The recipient must obtain, and maintain in force, property casualty insurance, with HUD named as beneficiary, in an amount at least equal to the amount of the acquisition/rehabilitation advance or the moderate rehabilitation grant provided to the recipient.

§ 841.313 Eminent domain.

A recipient whose structure is taken by eminent domain must repay the acquisition/rehabilitation advance or the moderate rehabilitation grant provided to the recipient, to the extent that funds are available from the eminent domain proceeding.

§ 841.315 Prevention of undue benefits.

(a) *General.* If assistance in the form of an acquisition/rehabilitation advance or a moderate rehabilitation grant is provided for a project and the project is sold or otherwise disposed of during the 20 years following initial occupancy of the project, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient from unduly benefitting from the sale or the disposition.

(b) *Exception.* This section does not apply to sales or dispositions that result in the continued use of the project for the direct benefit of lower income persons or where all proceeds from the sale or disposition are used to provide supportive housing.

§ 841.320 Resident rent.

Each homeless individual residing in permanent housing is required to pay as rent an amount determined in accordance with Section 3(a) of the United States Housing Act of 1937. Under Section 3(a), each resident must pay as rent the highest of:

(a) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses);

(b) 10 percent of the family's monthly income; or

(c) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

As part of the technical assistance under § 841.115, HUD will provide successful applicants with information and assistance concerning the calculation of resident rent.

§ 841.325 Number of residents.

If the permanent housing consists of dwelling units in a rental building, a condominium, or a cooperative, the project may not serve more than eight handicapped homeless persons, and the homeless families of the eight handicapped homeless persons (if the head of the family or the spouse of the head of the family is a handicapped homeless person). If the permanent housing is a group home, the project may not serve more than eight handicapped homeless persons, and may not serve the families of the handicapped homeless persons.

§ 841.330 Applicability of other Federal requirements.

Use of assistance provided under this part must comply with the following additional requirements:

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to the Program are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of handicapped homeless persons, recipients and project sponsors serving a designated population of handicapped homeless persons are required, within the designated population, to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, and handicap.

(1) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C.

3601-19) (Fair Housing Act) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients and project sponsors must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(6) If the procedures that the recipient or project sponsor intends to use to make known the availability of the permanent housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin or handicap who may qualify for admission to the housing, the recipient or project sponsor must establish additional procedures that will ensure that these persons are made aware of the availability of permanent housing opportunities. The recipient and the project sponsor must also establish additional procedures that will ensure that interested persons can obtain information concerning the existence and location of services and facilities that are accessible to handicapped persons.

(b) *Environmental.* The National Environmental Policy Act of 1969, the related authorities in 24 CFR Part 50, and the Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601) are applicable to proposals under this program.

(c) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A-87 and A-102 (as set forth in 24 CFR Part 85) apply to the acceptance and use of assistance under the program by

governmental entities, and OMB Circular Nos. A-110 and A-122 apply to the acceptance and use of assistance by private nonprofit organizations, except the requirements of 24 CFR 85.24 are modified by § 841.125, and the requirements of 24 CFR 85.31 are modified by §§ 841.310 and 841.315.

(d) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR Part 35 (except as superseded in paragraph (d)(2) of this section) apply to the program.

(2) (i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to structures for which assistance is provided under this program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to the program, the requirements prescribed in Subpart C of 24 CFR Part 35. The requirements of this paragraph apply to structures that will be occupied by children under seven years of age.

(ii) The following definitions apply to this paragraph (d):

Applicable surface means all intact and nonintact painted interior and exterior surfaces of a residential structure.

Chewable surface means all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means excessive absorption of lead: that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

(iii) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, the applicant must inspect the structure for defective paint surfaces before it submits an application. Recipients must inspect assisted structures at least annually during the term of their operating commitment to HUD. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is

required. Correction of defective surfaces found during the initial inspection must be completed before initial occupancy of the project. Correction of defective paint conditions discovered at periodic inspection must be completed within 30 days of their discovery. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(iv) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, if the recipient is presented with test results that indicate that a child under the age of seven years occupies the structure and has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) In lieu of the procedures set forth in the preceding clause, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vi) The recipient must take appropriate action to protect tenants from hazards associated with abatement procedures.

(vii) The recipient must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the recipient must keep the test results and, if applicable, the certification of treatment indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this Section, these surfaces do not have to be tested or treated at any subsequent time.

(3) Applicants and recipients under this part may require project sponsors to comply with some or all of the requirements of this paragraph (d). The

applicant or recipient, however, must ensure that the program sponsor carries out all requirements in accordance with the paragraph, and must retain ultimate responsibility for complying with the requirements of this paragraph.

(e) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circulars A-102 and 24 CFR Part 85, no person:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or the project sponsor, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities or

(2) Who is in a position to participate in a decisionmaking process or gain inside information such regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Audit.* The financial management systems used by recipients under this program must provide for audits in accordance with 24 CFR Part 44. Project sponsors are subject to the audit requirements of OMB Circular A-110. HUD may perform or require further and additional audits as it finds necessary or appropriate.

(h) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR Part 52 are not applicable to applications under this program.

(i) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a-276a-5) do not apply to the program.

Subpart F—Administration

§ 841.400 Obligation of funds, funding amendments, and deobligation.

(a) *Obligation of funds.* When HUD selects an application for funding and notifies the recipient, it will obligate funds to cover the amount of the approved acquisition/rehabilitation advance or moderate rehabilitation grant.

(b) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated for the acquisition/rehabilitation advance or the moderate rehabilitation grant.

(c) *Deobligation.* (1) HUD may deobligate amounts for the acquisition/rehabilitation advance or the moderate rehabilitation grant:

(i) If the actual total costs of acquisition, substantial rehabilitation, acquisition and rehabilitation, or moderate rehabilitation, are less than the total costs anticipated in the application; or

(ii) If proposed acquisition or rehabilitation activities are not begun or completed within a reasonable time after selection.

(2) If, as a result of an audit, HUD determines that the recipient has expended funds for uses that are ineligible under this part, HUD may adjust or deobligate funding amounts, as appropriate, to recover the ineligible costs.

(3) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, and other sanctions may be imposed

(4) HUD may:

(i) Readvertise the availability of funds that have been deobligated under this section in a notice of fund availability under § 841.200, or

(ii) Reconsider applications that were submitted in response to the most recently published notice of fund availability and select applications for funding with the deobligated funds. Such selections will be made in accordance with §§ 841.207-841.225.

Date: May 31, 1988.

James E. Schoenberger,
General Deputy, Assistant Secretary for
Housing—Federal Housing Commissioner.
[FR Doc. 88-14288 Filed 6-23-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-88-1806; FR-2521]

Supportive Housing Demonstration Program—Invitation for Applications

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Invitation for Applications.

SUMMARY: On February 16, 1988 (53 FR 2444), HUD published a notice announcing the availability of \$30 million in funds for permanent housing for handicapped homeless persons under the Supportive Housing Demonstration Program authorized under Subtitle C of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987). Because HUD did not receive a sufficient number of applications to use the entire \$30 million available for permanent housing, this notice invites additional applications for the program.

EFFECTIVE DATE: This notice is effective June 24, 1988.

Applications for assistance for permanent housing for handicapped homeless persons are due August 30, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Bourne, Director, Transitional Housing Development Staff, Department of Housing and Urban Development, Room 9141, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-9075 or 755-1520. Hearing or speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

On February 16, 1988 (53 FR 2444), HUD published a notice announcing the availability of funds for permanent housing for handicapped homeless persons under the Supportive Housing Demonstration Program authorized under Subtitle C of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987). The notice announced the availability of \$30 million in funds for permanent housing for handicapped homeless persons. \$15 million of these funds were set aside for this housing in the Supplemental Appropriations Act, 1987 (Pub. L. 100-71, approved July 11, 1987) and \$15 million

of these funds were set aside for this housing in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (Pub. L. 100-202, approved December 22, 1987).

The deadline for applications for permanent housing for handicapped homeless persons was set as March 31, 1988. HUD did not receive a sufficient number of applications by the March 31, 1988 deadline to expend the \$30 million in funds available for the program. Approximately \$25 million remains available for the program.

HUD conducted a survey to determine why some States did not apply for funds, and why others did not submit a greater number of applications. The results of this survey indicate that the lack of sufficient time to prepare applications was a major contributing factor. Accordingly, the Department has encouraged continued efforts to develop applications and has notified all State governors and the Mayor of the District of Columbia that they will have an opportunity to apply for the remaining funds following the review and selection of applications received by March 31, 1988. Today's notice invites additional applications for permanent housing for handicapped homeless persons.

II. Application procedures

The February 16, 1988 notice described the requirements that would govern the selection of applications and the use of funds for permanent housing for handicapped homeless persons. These requirements are those contained in the proposed rule governing permanent housing for handicapped homeless persons (proposed Part 841 published October 26, 1987 (52 FR 39965-39974). (The February 16, 1988 notice also modified these procedures to permit HUD to conduct an environmental review simultaneously with the review of application threshold requirements.) Interested persons are advised to consult these documents for specific program requirements. (Elsewhere in today's Federal Register, HUD has published a final rule governing the Supportive Housing Demonstration Program, including permanent housing for handicapped homeless persons. The effective date of the final rule is September 1, 1988. Consequently, the final rule will not govern the submission of applications under this notice.)

HUD developed a two-part application package prescribing the information that applicants (*i.e.*, States) must submit on behalf of project sponsors (*i.e.*, private nonprofit organizations). This package was sent to

all State governors and the Mayor of the District of Columbia in December 1987 with instructions to designate a State agency to coordinate the application process. Minor modifications are being made to the application package. These modifications have no effect on the preliminary development of applications. The modified application package will be sent to the designated State agencies as soon as it is available.

An interested private nonprofit organization may obtain an application package only through the designated State agency. The name, address, and telephone number of the contact person in the appropriate State agency may be obtained by calling (202) 755-1520 or 755-9075. Hearing or speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These telephone numbers are not toll-free.)

Applications must be on the form prescribed by HUD. Applicants will be required to submit two copies of their application to the Department of Housing and Urban Development, Room 9141, 451 Seventh Street, SW., Washington, D.C. 20410, and one copy of the application to the Director of Housing in the appropriate HUD field office, by 5:15 p.m. (E.D.T.) August 30, 1988. Applications that are received after this date and time will be rejected.

Following the expiration of the August 30, 1988 deadline, HUD Headquarters will review, rate and rank the applications consistent with its announced procedures. HUD will make and announce its final selections as soon as possible following the submission of applications.

III. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). Elsewhere in today's issue of the *Federal Register*, the Department has published a separate document which includes an example of the application

package and related instructions, and notifies the public that HUD has requested expedited review by OMB of the information collection requirements. Interested persons are invited to submit comments on the information collection requirements in accordance with the procedures set forth in that document. No person may be subjected to penalty for failure to comply with the information collection requirements until the requirements have been approved and assigned an OMB control number. The OMB control number when assigned will be announced in the Federal Register.

The Catalog of Federal Domestic Assistance program number is 14.178.

Authority: Title IV, Subtitle C of the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100-77, approved July 22, 1987; sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 16, 1988.

James E. Schoenberger,
General Deputy Assistant Secretary for
Housing—Federal Housing Commissioners.

[FR Doc. 88-14289 Filed 6-23-88; 8:45 am]

BILLING CODE 4210-27-M

Office of Administration

[Docket No. N-88-1816]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal by July 1, 1988. Comments should refer to the proposal by name and should be sent to:

John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for expedited review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Date: June 17, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Supportive Housing Demonstration Program: Permanent Housing for the Handicapped Homeless Application Package.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This program is necessary to allow HUD to determine the eligibility of private nonprofit organizations or governmental entities to receive funding under the demonstration program. It is needed to assess the relative capability of these organizations to operate housing and supportive services for the handicapped homeless population to be served.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	Frequency of response	Hours per response	Burden hours
Permanent HSG.....	125	1	45	5,625
Transitional HSG.....	275	1	45	12,375
Total burden.....	400	1	45	18,000

Total estimated burden hours: 18,000.

Status: Revision.

Contact: Morris Bourne, HUD, (202) 755-9075; John Allison, OMB, (202) 395-6880.

Date: June 15, 1988.

Supporting Statement—Supportive Housing Demonstration Program—Notice of Final Rule OMB 2502-0361

A. Justification

1. Subtitle C of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987) directed HUD to carry out a Supportive Housing Demonstration Program to develop innovative approaches for providing housing and supportive services for homeless persons through two components: transitional housing, by facilitating the movement of homeless individuals to independent living, and permanent housing for homeless handicapped persons.

The information sought from potential applicants for this program in the final rule is necessary to permit HUD to determine which organizations seeking funding under the demonstration are eligible to participate and have the capacity to carry out the activities under the demonstration as required by statute.

2. HUD Headquarters staff will use the information to establish the eligibility of applicants (or project sponsors) to participate in the demonstration and to assess, as required by law:

1. the financial responsibility of the applicant;
2. the ability of the applicant (or project sponsor) to develop and operate the housing and to provide or coordinate supportive services for the residents of the housing;
3. the innovative quality of the applicant's proposal, and
4. the need for the housing and supportive services in the area to be served.

These assessments are necessary to allow HUD to determine the relative merits of each proposal, rank them against each other, and ultimately select applications for funding. HUD would be unable to assure that it met the statutory

requirements for selecting recipients for assistance under this program if it did not collect the requested information.

3. The use of improved information technology to reduce burden was not considered because of the relatively small number of applicants for the demonstration program and the one-time nature of the information requests for respondents.

4. We have been unable to identify any requests for information which duplicate the burden for this documentation.

5. No similar information available from any source.

6. We have examined the information requested to ensure that it is the minimum amount necessary to select the applicants in accordance with the statutory directives, and to assure the avoidance of fraud, waste and mismanagement in the operation of the program.

7. Applications are submitted occasionally, based upon appropriation of funds for the demonstration program.

8. There are no known circumstances that require the collection of information to be inconsistent with the guidelines of 5 CFR 1320.6.

9. HUD program officials conducted five meetings with homeless care providers and other groups and individuals to obtain their views on transitional housing before final development of the guidelines. Also, the public was given an opportunity to comment on the proposed rule which was published in the *Federal Register* on October 26, 1987. The Interagency Council on the Homeless which is responsible for reviewing and

monitoring Federal programs to assist the homeless, has an opportunity to comment on both components of the Supportive Housing Demonstration Program. In addition, the Department has consulted with the National Association of State Mental Health Program Directors, the Mental Health Law Project, and the National Mental Health Association specifically on the permanent housing component.

10. This information collection would not contain personal information that would require an assurance of confidentiality.

11. The final rule does not contain requests for information of a sensitive nature.

12. The costs to the federal government will consist primarily of personnel costs involved in Headquarters review of the applications in order to select recipients of supportive housing demonstration funds. Headquarters review should take approximately 8 hours for each application, with a total review time for the estimated 400 applications of 3200 hours. Cost estimated to be: GS-11 at \$13/hour x 3200 hours = \$41,600.

The dollar cost to the applicant in developing the application is expected to be minimal, since most of the applicants are expected to be governmental entities and private nonprofit organizations, where the activities necessary to develop the application will be done on a pro bono basis, the cost would be estimated at \$10/hour x 18,000 hours = \$180,000.

13. We estimate that approximately 400 organizations will submit applications for participation in this

demonstration program (i.e. 275 for transitional housing, 125 for permanent housing). Applicants will require approximately 18 hours time to negotiate with and secure support for their program from social service agencies and approximately 24 hour will be required to develop the application itself and estimate one hour for filing of any information to maintain accurate records. Thus, estimated average burden hours for each application is 45 hours.

14. The Supplemental Appropriation Act of 1987 (Pub. L. 100-71, approved July 11, 1987) appropriated \$80 million for the Supportive Housing Demonstration Program: a reauthorization, with amendments, of funds (\$65 million) for Transitional Housing, and new funding (\$15 million) for permanent housing for handicapped homeless persons. The Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1988 (Pub. L. 100-202, approved December 22, 1987) (Fiscal Year-1988 Appropriations Act) appropriated an additional \$65 million in funds for the Supportive Housing Demonstration Program: \$750,000 for the Interagency Council on the Homeless, \$49.25 million for transitional housing, and \$15 million for permanent housing. Burden hours, therefore, have been increased due to additional collection of information for distribution of new funding under the demonstration program. We estimate that the new funding will allow an additional 75 applicants for transitional housing and 50 for permanent housing.

15. This information will not be published for statistical use.

BILLING CODE 4210-01-M

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PERMANENT HOUSING PROGRAM FOR THE HANDICAPPED HOMELESS

APPLICATION PACKAGE

Thank you for your interest in the Permanent Housing Program for Handicapped Homeless Persons (Permanent Housing Program). This Application Package specifies application requirements and must be used in conjunction with the Proposed Rule published in the Federal Register on October 26, 1987.

DIRECTIONS: The Governor must designate a State agency to coordinate the development of the application package(s). Coordination will involve the following steps:

1. notifying private, non-profit organizations of the availability of funds through the Permanent Housing Program;
2. making copies of the application package available to potential project sponsors;
3. establishing an interim deadline for project sponsors to submit their applications to the State agency;
4. reviewing the project sponsors' applications;
5. completing each application package;
6. forwarding all the application packages to HUD by August 30, 1988.

The Application Package consists of two parts: Part I contains Exhibits 1 through 7 which must be completed by the Applicant (State) and Part II contains Exhibits 1 through 8 which must be completed by the Project Sponsor. The designated State agency may add additional Exhibits to Part II of the application if necessary to complete certain Exhibits in Part I. An entire application (Part I and Part II (except for Exhibit 8 and additional Exhibits required by the State)) must be submitted to HUD by the State on behalf of each Project Sponsor.

APPLICATION FORMAT: Applications must be appropriately bound with Exhibits tabbed and numbered as shown in this package.

NUMBER OF COPIES REQUIRED: One signed original and two copies

SUBMIT THE ORIGINAL AND ONE COPY TO:

Transitional Housing Development Staff
Department of Housing and Urban Development
Room 9141
451 Seventh St., SW
Washington, D.C. 20410

SUBMIT THE SECOND COPY TO:

The Director of Housing in the appropriate HUD Field Office.
If you are not sure of the correct HUD Field Office for the area in which your project is located, please call the appropriate HUD Regional Homeless Coordinator:

<u>Region</u>	<u>City</u>	<u>Name</u>	<u>Telephone #</u>
I	Boston	Robert Yablonskie	617-565-5285
II	New York	Ira Weiner	212-264-4705
III	Philadelphia	George Dukes	215-597-2860
IV	Atlanta	Charles Clark	404-331-4113
V	Chicago	Ann Scherrieb	312-353-5957
VI	Ft. Worth	Nancy Mattox	817-885-5483
VII	Kansas City	Marcia Presley	816-374-2664
VIII	Denver	Peter Downs	303-844-4959
IX	San Francisco	Kay Valory	415-556-4752
X	Seattle	Robert Scalia	206-442-4610

DEADLINE: Applications (Part I and Part II) must be received at the HUD Central Office (address above) by 5:15 PM DST Tuesday, August 30, 1988.

QUESTIONS: Contact the Transitional Housing Development Staff at (202) 755-9075 or 1520. These are not toll-free numbers.

STATUS OF APPLICATION: No information will be released by HUD regarding the processing status of an application until funding announcements are made.

TENTATIVE ANNOUNCEMENT OF SELECTIONS: August 30, 1988.

TABLE OF CONTENTS

Application Receipt Form

Description of Required Sections and Exhibits:

PART I: APPLICANT (STATE)

Section A - Applicant Information - Exhibits 1 and 2

Standard Form 424

Section B - Proposed Housing and Supportive Services - Exhibit 3

Section C - Certifications - Exhibits 4, 5, 6

Formats for Exhibits 4, 5, 6

Section D - Financial - Exhibit 8

Formats for Exhibits 8-1, 8-2

PART II: PROJECT SPONSOR

Section A - Project Sponsor Information - Exhibits 1, 2

Section B - Proposed Housing and Supportive Services - Exhibits 3, 4, 5

Section C - Certifications - Exhibits 6, 7

Formats for Exhibits 6, 7

Section D - Financial - Exhibit 8

Proposed Rule and Announcement of Fund Availability (October 26, 1987)

Invitation for Applications

APPLICATION RECEIPT FORM

DIRECTIONS:

If you wish to receive written verification that your application was received in the HUD Office by 5:15 P.M. DST on Tuesday, August 30, 1988, type or print your name and address in the block provided and include this form on the top of your originally signed application. The bottom portion will be completed by HUD and returned to you.

THIS PORTION WILL BE COMPLETED BY HUD

This is to verify that your application was received in the HUD Office by 5:15 P.M. DST on Tuesday, August 30, 1988.

The following numbers have been assigned to your applications:

NAME OF PROJECT SPONSOR

NUMBER

1. The first part of the document is a list of names and their corresponding addresses. The names are listed in the first column, and the addresses are listed in the second column. The names are: John Doe, Jane Smith, and Bob Johnson. The addresses are: 123 Main St, 456 Elm St, and 789 Oak St.

2. The second part of the document is a table with two columns. The first column is labeled "Name" and the second column is labeled "Address". The table contains the same data as the first part of the document.

Name	Address
John Doe	123 Main St
Jane Smith	456 Elm St
Bob Johnson	789 Oak St

3. The third part of the document is a list of names and their corresponding addresses. The names are listed in the first column, and the addresses are listed in the second column. The names are: John Doe, Jane Smith, and Bob Johnson. The addresses are: 123 Main St, 456 Elm St, and 789 Oak St.

4. The fourth part of the document is a table with two columns. The first column is labeled "Name" and the second column is labeled "Address". The table contains the same data as the first part of the document.

Name	Address
John Doe	123 Main St
Jane Smith	456 Elm St
Bob Johnson	789 Oak St

PART I - APPLICANT (STATE)

DIRECTIONS: The State must submit to HUD one application (Parts I and II) on behalf of each project sponsor within the State. The State must complete Part I, Exhibits 1 through 7. If the state is submitting more than one application the state must provide one original Part I with the first application and a copy of Part I with each additional application. The project sponsor will complete Part II, Exhibits 1 through 8, plus any additional Exhibits the State may require.

SECTION A - APPLICANT INFORMATIONExhibitNumberDescription

- 1 Letter of Participation (must be signed by the Governor)
Include the following:
 - a. brief description of each application identified by project sponsor name (include type of structures, handicapped population to be served, number of residents per structure, amount and type of assistance requested).
 - b. evidence that there is an unmet need for the proposed permanent housing in the location to be served (i.e., estimates of unmet demand, present need, projections of future need) and that this need is likely to continue throughout the term of the applicant's commitment to HUD.
 - c. brief description of the State's efforts to provide housing and supportive services to the handicapped homeless population.
 - d. an assessment of how the proposed project would meet the needs of the handicapped homeless population in the State.
 - e. a description of the innovative quality of each application identified by project sponsor name proposal including how it uses a new or unusual approach that holds promise of success-fully providing permanent housing and supportive services to the residents of the project.

Exhibit
NumberDescription

- f. Designation of the State agency whose primary responsibility is the provision of services to handicapped persons and who will assist the State housing finance agency in fulfilling the State responsibilities under Subtitle C of Title IV of the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100-77. (If this agency will not be responsible for the overall administration of this program, the applicant must also designate the administering agency including the name, address and telephone number of contact person.)

The (title of official in charge of the agency names above to whom the delegation is being given) is authorized to execute the certifications required by Exhibits 2,4,5 and 9 of the application for funds under the permanent housing component of the Supportive Housing Demonstration Program. I certify that this delegation of authority is authorized by the laws of the State of _____.

- g. Commitment of matching funds - (The amount of HUD assistance provided must be matched with at least an equal amount of state or local government funds that will be used solely for acquisition and/or rehabilitation. At least 50 percent of this match must be state government funds.)
1. Identify, per project sponsor, the amount of state government funds that will be committed to match the amount of HUD funds requested plus the extent to which it will supplement the required match with additional state funding.
 2. If the state cannot commit at least half of the matching contribution, it must request a waiver of Section 841.125 (a)(2) of the Proposed Rule for the Supportive Housing Demonstration Program published in the Federal Register on October 26, 1987. In requesting a waiver, demonstrate the following:
 - it is experiencing a severe financial hardship that makes it unable to provide 50 percent of the matching contribution, and
 - that local governments of the area to be served by the project (s) will contribute additional funds in an aggregate amount equal to the amount of the State contribution that may be a waived by HUD.

Exhibit
NumberDescription

- 3 If the local government will be providing a portion or all of the required matching contribution, provide a letter of commitment from each local government source, indicating the amount of funds being committed.
- h. an assurance that the state will promptly transmit both the Federal and State assistance for this program to the project sponsor and will facilitate the provision of necessary supportive services to the residents of the project.
- i. a statement certifying that the submission of the application is authorized under State law, and that the State has the legal authority to participate in the program in accordance with program requirements and the requirements of other applicable Federal law.

Signature of Governor

2. Standard Form 424 -
Complete blocks 4, 7, 8, 9, 10, 13, 15, 16, and 23

SECTION B - PROPOSED HOUSING AND SUPPORTIVE SERVICES

- 4 Site Control - The applicant (State) or the project sponsor must have control of the site (structure) at the time the application is submitted. If the applicant has control of the site, it must submit Exhibit 3 (a through f). If the project sponsor has control of the site, the applicant may skip Exhibit 4 (a through f) which must then be included by the project sponsor as Exhibit 4 (a through f) in Part II of the application.

NOTE: If more than one site/structure will be used per project sponsor, Exhibit 3 (a through f) must be submitted for each site/structure.

Exhibit
NumberDescription

Evidence that the applicant has control of the site (structure) in the form of:

- a. option agreement to purchase or lease
- b. lease agreement
- c. contract of sale
- d. deed or other proof of ownership
- e. documentation described below for acquisition from a public body or through eminent domain

Site Control Period

c

Options must, at a minimum, run through 3-15-89.

The term of the lease must be adequate to cover the required 10 year operating period of the permanent housing project.

Site Acquired from Public Bodies

If the site is to be acquired from a public body, submit evidence that the public body:

- a. possesses clear title or an option to purchase or lease; and,
- b. has entered into a legally binding written agreement to convey the site to the applicant upon its notification of funding under the program.

Site Acquired through Eminent Domain

If the site is to be acquired by the public body through the eminent domain process,

- a. the action must be complete by 7-15-88; AND,
- b. the application must include a copy of the land disposition agreement or a resolution from the public body conveying site control to the applicant.

3a

Permissive Zoning - Evidence that the proposed use of the site/structure is currently permissible under applicable zoning ordinances, regulations or approved variances or that actions necessary to make it permissible have been initiated and will be completed.

Examples of such evidence are:

- (1) a letter from the zoning board or commission
- (2) an attorney's opinion
- (3) a copy of the zoning ordinance indicating the proposed use is permissible.

- | Exhibit Number | Description |
|----------------|---|
| 3b | <u>Historical Properties</u> - Indication whether the project will involve the use of, or be adjacent to, a historic property and, if so, identification of the historic property. This information should be obtained from the State Historic Preservation Officer (SHPO), the local government or any local historic commission or organization and a copy of the information should be provided in this exhibit. |
| 3c | <u>Local Government Approval</u> - Written statement from the unit of general local government in which the proposed permanent housing is located, indicating that the proposed use of the structure and site is not inconsistent with any plan the local government may have which would affect the use of the structure and site for permanent housing.

If a written response was not received, submit a copy of your letter (requesting the local government's comments) as this exhibit. If the response is received prior to 12-15-88, it should be forwarded to HUD. |
| 3d | <u>Narrative description of the building, the neighborhood and the proposed rehabilitation.</u> Include a photograph of the building, its current use, and the estimated cost of the rehabilitation. |
| 3e | <u>Appropriateness of the proposed structure(s) and site(s).</u> Demonstrate that the proposed structure(s) and site(s) are appropriate for (1) the provision of housing and supportive services in a suitable non-institutional group setting and (2) for the handicapped homeless population to be served. |
| 3f | <u>Development schedule</u> - Provide an estimated date for each of the following: transmittal of Federal and State funding to project sponsor, acquisition, start-up and completion of rehabilitation, and initial occupancy of project (or date increased level of services begin). |

SECTION C - CERTIFICATIONS

- | | |
|---|--|
| 4 | Fair Housing and Equal Opportunity Certifications - complete attached format identified as Exhibit 4. |
| 5 | Applicant Certifications - complete attached format identified as Exhibit 5. |
| 6 | Certification of Consistency with Comprehensive Homeless Assistance Plan (CHAP) - the attached format identified as Exhibit 6 must be completed and signed by the public official responsible for submitting the CHAP. |

Exhibit 4

APPLICANT
FAIR HOUSING AND EQUAL OPPORTUNITY CERTIFICATIONS

The Applicant hereby assures and certifies that:

It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and regulations pursuant thereto (Title 24 CFR Part 1) which states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

It will comply with Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) as amended, which prohibits discrimination in housing on the basis of race, color, religion, sex or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

It will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with Federal financial assistance.

It will comply with Executive Order 11246 and all regulations pursuant thereto (42 CFR Chapter 60-1), which states that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in Section 130.5 of HUD regulations the equal opportunity clause required by Section 130.15(b) of the HUD regulations.

It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701a), and regulations pursuant thereto (24 CFR Part 135), which requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing, in the area of the project.

It will comply with Section 504 of the Rehabilitation Act of 1973, as amended which prohibits discrimination based on handicap in federally assisted and conducted programs and activities.

It will comply with the Age Discrimination Act of 1975, as amended, which prohibits discrimination because of age in programs and activities receiving Federal financial assistance.

It will comply with Executive Orders 11625, 12432, and 12138, which state program participants shall take affirmative action to encourage participation by businesses owned and operated by minority groups and women.

It will, in making known the availability of the permanent housing, establish additional procedures when intended procedures are unlikely to reach persons of any particular race, color, religion, sex or national origin who may qualify for admission.

Signature

Date

Typed Name and Title

Exhibit 7

APPLICANT CERTIFICATIONS

(Other than Fair Housing & Equal Opportunity Certifications which are in Exhibit 4)

The Applicant hereby assures and certifies that it will comply with the following:

1. It will ensure that the permanent housing project is operated in accordance with the provisions in the Proposed Rule published in the Federal Register on October 26, 1987.
2. The proposed permanent housing project is operationally feasible and will provide adequate housing and supportive services to handicapped homeless persons.
3. It will ensure that the proposed activities will not have caused and will not result in the temporary or permanent displacement of any person or entity.
4. It will ensure that the supportive services required for each resident upon his or her admission to the permanent housing project are continually assessed at appropriate intervals.
5. It will ensure that the structure identified in this application is used as permanent housing for not less than 10 years following its initial occupancy (or increased service delivery) with funding under this program.
6. It will ensure that the structure, after rehabilitation, will meet applicable State and local requirements regarding a safe and sanitary condition.
7. It will ensure the compliance with any applicable State licensing requirements in the operation of the permanent housing project.
8. It will repay the full amount of any acquisition/rehabilitation advance if the structure is not used for permanent housing for a 10 year period following the initial occupancy with funding under this program unless the Secretary determines that the project is no longer needed as permanent housing for handicapped homeless persons and approves its alternate use for the direct benefit of lower income persons.

9. The funds obligated by HUD under this program cannot be increased but may be decreased in accordance with the provisions in Section 841.400(b) and (c) of the Proposed Rule for the Supportive Housing Demonstration Program published in the Federal Register on October 26, 1987.
10. If the structure is taken by eminent domain or seizure during the 10 year period, it will repay the advance to the extent that funds are available from the eminent domain or other proceeding.
11. It will obtain and maintain in force property casualty insurance with HUD named as beneficiary, in an amount at least equal to the amount of the acquisition/rehabilitation advance or the moderate rehabilitation grant.
12. It will ensure that residents in the permanent housing project are required to pay rent in accordance with Section 3(a) of the United States Housing Act of 1937.
13. Use of the proposed structure as permanent housing for handicapped homeless persons is currently permissible under applicable zoning ordinances, regulations or approved variances or will be by 12-30-88.
14. The proposed structure and site are appropriate for (a) the provision of housing and supportive services in a suitable group setting, and (b) the handicapped homeless population to be served.
15. It will execute the Grant Agreement within two weeks of its receipt.
16. It will ensure that the permanent housing project is developed expeditiously in accordance with the time schedule included in Exhibit 4f of this application.
17. It will not employ, engage for services, award contracts or fund any contractors or subcontractors during any period of their debarment, suspension or placement in ineligibility status.
18. In the acceptance and use of assistance under this Program, it will comply with the policies, guidelines and requirements of OMB Circular Nos. A-87 and A-102.
19. It will ensure the compliance with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as described in Section 841.330(d) of the Proposed Rule for the Supportive Housing Demonstration Program published in the Federal Register on October 26, 1987.

20. The financial management system used for permanent housing will provide for audits in accordance with 24 CFR Part 44.
21. The proposed permanent housing project is not located in any 100-year floodplain (or 500 year floodplain if 50% or more of the living space in the structure is designed for residents with mobility impairments), as designated by maps prepared by the Federal Emergency Management Agency.
22. It will keep any records and make any reports that HUD may require.
23. The amounts estimated in this application for the cost of acquisition and/or rehabilitation of the permanent housing project can be supported by documentation which is on file and will be maintained for at least the first three years of operation with funding under this program.
24. No person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, that receives assistance under the demonstration and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or (2) who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, will obtain a personal or financial interest or benefit from the activity, or have any interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.
25. A resolution, motion or similar action has been duly adopted or passed as an official act by its governing body, authorizing the submission of this application and the establishment and operation of the proposed permanent housing project.
26. It will comply with all applicable requirements resulting from HUD's determination pursuant to Section 106 of the National Historic Preservation Act.
27. No assistance received from HUD for permanent housing (or any State or local government funds used to supplement this assistance) will be used to replace State or local government assistance program funds used to assist handicapped persons, homeless individuals, or handicapped homeless persons during the calendar year preceding the date of the application or were designated for such use through an official action of the applicable governmental entity during the calendar year preceding the date of the application.

28. No more than 5 percent of an acquisition/rehabilitation advance or a moderate rehabilitation grant will be used for administrative purposes.

Signature

Date

Typed Name and Title

WARNING

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967) shall apply to such statements (18 U.S.C. 1001, among other things, provides that who ever knowingly and willfully makes or uses a document or writing containing any false, fictitious, fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined no more than \$10,000 or imprisoned for not more than five years, or both).

Exhibit 6

CERTIFICATION OF CONSISTENCY WITH
COMPREHENSIVE HOMELESS ASSISTANCE PLAN (CHAP)

I _____ OF THE
(Name and Title)
STATE OF _____, CERTIFY THAT THIS
PROJECT IS CONSISTENT WITH OUR APPROVED COMPREHENSIVE HOMELESS
ASSISTANCE PLAN.

(Signature)

(Date)

SECTION D - FINANCIALExhibit
NumberDescription

7

Financial Responsibility of Project Sponsor

Submit a statement that the Governor or other chief executive official of the State has approved the financial responsibility of the project sponsor.

DIRECTIONS: The project sponsor must submit to you as Section D of Part II of the Application Package a statement of income and expenses and balance sheets for each of the past three years of its operation (DO NOT SUBMIT THEM IN THIS APPLICATION). In making your determination of financial responsibility of the project sponsor, take into consideration its past financial history, its current and anticipated financial outlook, the amount of funding that will be committed under this proposal and its other financial responsibilities.

8

Types and Amounts of Assistance Requested - Complete attached format identified as Exhibit 8-1 OR 8-2, as appropriate.

Exhibit 8-1

TYPE OF ASSISTANCE REQUESTED

DIRECTIONS: Complete the spaces on the following pages under the type of assistance that you are requesting. If you are not requesting a particular type of assistance, check the appropriate box.

If your application proposes an expansion of an existing facility or project currently serving handicapped homeless persons, you must request assistance for the particular costs relating to the expansion only.

I. Acquisition/Rehabilitation Advance

☐ Requested
(complete below)

☐ Not Requested
(go to next page)

-
- A.* Cost of Acquisition \$ _____
- B.* Cost of Rehabilitation \$ _____
- C. Total Acquisition/Rehabilitation Cost \$ _____
(Add Lines A and B)
- D. Total Amount Provided By Applicant \$ _____
- E. Total Amount Provided by Local
Government (if applicable) \$ _____
- F. Total Match (Add Lines D and E) \$ _____
- G. HUD Funding Requested By Applicant \$ _____ (no
more 5 percent of this figure can be applied toward
administrative costs.)

- NOTES:**
1. Line D must be at least 50 percent of Line F.
 2. Line G must not exceed the lesser of: 50 percent of Line C or \$200,000.
- * Include administrative costs

Exhibit 8-2

II. Moderate Rehabilitation Grant

☐ Requested
(complete below)

☐ Not Requested
(go to next page)

DIRECTIONS: See attached example (Exhibit 10-2a) for assistance in completing this Exhibit.

A. Cost of Rehabilitation \$ _____

** Number of Units per project

_____ 0 BR unit in SRO
_____ BR unit in group home
_____ 0 BR unit

B. Total x \$5,000 = \$ _____

_____ 1 or more BR unit(s)

C. Total x \$7,000 = \$ _____

D. Project Limit
(Add Lines B and C) \$ _____

E. Total Amount Provided by Applicant \$ _____

F. Total Amount Provided by Local Government
(if applicable) \$ _____

G. Total Match (Add Lines E and F) \$ _____

H. HUD Funding Requested by Applicant \$ _____
(no more than
5 % of this
figure can be
applied toward
administrative
costs)

NOTES: Line E must be at least 50 percent of Line G.

Line H must not exceed the lesser of: Line D or
50 percent of Line A.

* include administrative costs.

** Total project limited to 8 handicapped persons or 8
handicapped persons and their families in a structure other than a
group home.

, Exhibit 8-2a

EXAMPLE OF COMPLETED FORMAT
FOR MODERATE REHABILITATION GRANT

The moderate rehabilitation grant may not exceed the lesser of (1) the project limit (described below); or, (2) 50 percent of the cost of the rehabilitation.

Project Limit = \$ 5,000 per (1) bedroom unit in single room occupancy (SRO) housing

(2) bedroom unit in group home

(3) unit without bedroom in other types of projects

\$ 7,000 per unit with one or more bedrooms in other types of projects.

Project - one or more existing structures, or parts of one or more existing structures, as long as the entire project does not house more than eight handicapped homeless persons (families may be included in structures other than group homes or SROs).

Example: Project Sponsor "X" is applying for a moderate rehabilitation grant to rehabilitate a group home to serve 4 handicapped people; two single room occupancy units, each serving one handicapped person; and, two 2 bedroom units in an apartment complex, each serving 1 family (1 handicapped person, spouse and child). The total cost of rehabilitation is \$95,000. Turn to the following page for the completed format.

Exhibit 8-2

II. Moderate Rehabilitation Grant

☐ Requested
(completed below)

☐ Not Requested
(go to next page)

A. Cost of Rehabilitation \$ 95,000 *

* Number of Units per project

<u>4</u>	O BR unit in SRO
<u>2</u>	BR unit in group home
<u>2</u>	O BR unit

B. 6 x \$5,000 = \$ 30,000
1 or more BR unit(s)

C. 2 x \$7,000 = \$ 14,000

D. Project Limit
(Add Lines B and C) \$ 44,000

E. Total Amount Provided by Applicant \$ 27,000

F. Total Amount Provided by Local
Government (if applicable) \$ 24,000

G. Total Match (Add Lines E and F) \$ 51,000

H. HUD Funding Requested by Applicant \$ 44,000

(no more than 5 % of
this figure can be
applied toward
administrative
costs)

NOTES: Line E must be at least 50 percent of Line G.

Line H must not exceed the lesser of: Line D or
50 percent of Line A.

* Include administrative costs

** Total project limited to 8 handicapped persons or 8 handicapped persons and their families in a structure other than a group home.

PART II - PROJECT SPONSORSECTION A - PROJECT SPONSOR INFORMATION

PROVIDE NAME, ADDRESS, AND PHONE NUMBER OF CONTACT PERSON

Exhibit
Number

Description

1

Evidence of Project Sponsor eligibility

Submit:

- a. Currently effective IRS ruling providing tax exempt status;
- b. Articles of Incorporation, Charter or Constitution; and,
- c. By-laws

2

Narrative description of past experience (no more than two single-spaced or four double-spaced typed pages). Include, at a minimum, the following:

- a. Have you developed and/or operated housing? In what capacity? For how long?
- b. Have you provided and/or coordinated the provision of supportive services? What kinds of services? For what type of population? For how long?
- c. How large was your operation?
- d. How many people did you serve at one time?
- e. What was your source of financing?
- f. How do you measure your success?
- g. How does your experience relate to your role in the proposed project?
- h. Describe the administrative, managerial and and operational capabilities of your staff. How many of your staff function in these capacities?

SECTION B - PROPOSED HOUSING AND SUPPORTIVE SERVICESExhibit
NumberDescription

3

Narrative response to the following: (no more than five single-spaced or ten double-spaced typed pages).

- a. Describe the handicapped homeless population(s) you will house per structure (i.e., male/female, ages, disabilities, etc.).
- b. How many individuals and/or families will live in each structure?
- c. Describe your occupancy selection process.
- d. Describe the supportive services plan for the residents.
 - (1) What services will be provided?
 - (2) Who will provide them?
 - (3) If service providers other than the project sponsor will be providing any or all of the supportive services, how will coordination be ensured?
 - (4) When will they be provided?
 - (5) Will they be provided on or off-site?
If off-site, how will access be ensured?
- e. What arrangement, if any, will be made for residential supervision/management? Why is this arrangement appropriate?
- f. How and when will client assessments be performed?
By whom?
- g. Describe the number and type of staff that will be assigned to this project.
- h. Describe any aspects of the proposed project that you think are innovative.

IF YOU ARE CURRENTLY OPERATING AN EXISTING PROGRAM OR FACILITY SERVING HANDICAPPED HOMELESS PERSONS, ANSWER THE FOLLOWING:

- i. Are you increasing the number of people served in your existing program or facility? Give the current number served and the number increased.
- j. Are you proposing a change in use (e.g. conversion from transitional housing to permanent housing)?

Exhibit
NumberDescription

- (cont'd) k. How does your proposal meet the eligibility requirements specified in the Proposed Rule for the Supportive Housing Demonstration Program, Section 841.120(a) Funding of existing housing facilities and programs?

4 Site Control - The applicant (State) or the project sponsor must have control of the site (structure) at the time the application is submitted. If the project sponsor has control of the site, it must submit Exhibit 4 (a through f). If the applicant has control of the site, the project sponsor may skip Exhibit 4 (a through f) which must then be included by the applicant as Exhibit 3 (a through f) in Part I of the application.

Evidence that the project sponsor has control of the site (structure) in the form of:

- a. option agreement to purchase or lease
- b. lease agreement
- c. contract of sale
- d. deed or other proof of ownership
- e. documentation described below for acquisition from a public body or through eminent domain

Site Control Period

Options must, at a minimum, run through 3-15-89.

The term of the lease must be adequate to cover the required 10 year operating period of the permanent housing project.

Sites Acquired from Public Bodies

If the site is to be acquired from a public body, submit evidence that the public body:

- a. possesses clear title or an option to purchase or lease, AND
- b. has entered into a legally binding written agreement to convey the site to the project sponsor upon its notification of funding under the program.

Exhibit
Number

Description

(cont'd) Site Acquired through Eminent Domain

If the site is to be acquired by the public body through the eminent domain process,

- a. the action must be complete by 12-15-88, AND
- b. the application must include a copy of the land disposition agreement or a resolution from the public body conveying site control to the project sponsor.

4a

Permissive Zoning - Evidence that the proposed use of the site/structure is currently permissible under applicable zoning ordinances, regulations or approved variances or that actions necessary to make it permissible to have been initiated and will be completed no later than 12-30-88.

Examples of such evidence are:

- (1) a letter from the zoning board or commission
- (2) an attorney's opinion
- (3) a copy of the zoning ordinance indicating the proposed use is permissible.

4b

Historical Properties - Indication whether the project will involve the use of, or be adjacent to, a historic property and, if so, identification of the historic property. This information should be obtained from the State Historic Preservation Officer (SHPO), the local government or any local historic commission or organization and a copy of the information should be provided in this exhibit.

4c

Local Government Approval - Written statement from unit of general local government in which the proposed permanent housing is located, indicating that the proposed use of the structure and site is not inconsistent with any plan the local government may have which would affect the use of the structure and site for permanent housing.

If a written response was not received, submit a copy of your letter (requesting the local government's comments) as this exhibit. If the response is received prior to 7-15-88, it should be forwarded to HUD.

- | Exhibit
Number | Description |
|-------------------|---|
| 4d | <u>Narrative description of the building, the neighborhood and the proposed rehabilitation.</u> Include a photograph of the building, its current use, and a breakout the estimated cost of the rehabilitation. |
| 4e | <u>Appropriateness of the proposed structure(s) and site(s).</u> Demonstrate that the proposed structure(s) and site(s) are appropriate for (1) the provision of housing and supportive services in a suitable noninstitutional group setting and (2) for the handicapped homeless population to be served. |
| 4f | <u>Development schedule</u> - Provide an estimated date for each of the following: transmittal of Federal and State funding to project sponsor, acquisition, start-up and completion of rehabilitation, and initial occupancy of project (or date increased level of services begin). |
| 5 | <u>Letters of intent</u> (not support) from any organization(s) which will provide supportive services to the residents of the permanent housing project. Each letter must describe the service(s) and indicate the organization's ability and willingness to provide the service(s). |

This exhibit is not required if all supportive services will be provided by the applicant/project sponsor.

SECTION C - CERTIFICATIONSExhibit
NumberDescription

- 6 Fair Housing and Equal Opportunity Certifications
complete attached format identified as Exhibit 6.
- 7 Project Sponsor Certifications - complete attached
format identified as Exhibit 7.

Exhibit 6

PROJECT SPONSOR
FAIR HOUSING AND EQUAL OPPORTUNITY CERTIFICATIONS

The Project Sponsor hereby assures and certifies that:

It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and regulations pursuant thereto (Title 24 CFR Part 1) which states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

It will comply with Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) as amended which prohibits discrimination in housing on the basis of race, color, religion, sex or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

It will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with Federal financial assistance.

It will comply with Executive Order 11246 and all regulations pursuant thereto (42 CFR Chapter 60-1), which states that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in Section 130.5 of HUD regulations the equal opportunity clause required by Section 130.15(b) of the HUD regulations.

It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701a), and regulations pursuant thereto (24 CFR Part 135), which requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

It will comply with Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination based on handicap in federally-assisted and conducted programs and activities.

It will comply with the Age Discrimination Act of 1975, as amended, which prohibits discrimination because of age in programs and activities receiving Federal financial assistance.

It will comply with Executive Orders 11625, 12432, and 12138, which state program participants shall take affirmative action to encourage participation by businesses owned and operated by minority groups and women.

It will, in making known the availability of the permanent housing establish additional procedures when intended procedures are unlikely to reach persons of any particular race, color, religion, sex or national origin who may qualify for admission.

Signature, Authorized Officer/Director

Date

Typed Name and Title

Exhibit 7

PROJECT SPONSOR CERTIFICATIONS

(Other than Fair Housing & Equal Opportunity Certifications which are in Exhibit 6)

The Project Sponsor hereby assures and certifies that it will comply with the following:

1. It will operate the permanent housing project in accordance with provisions of the Proposed Rule published in the Federal Register on October 26, 1987.
2. It will limit the number of occupants in a group home to eight individuals excluding their families and in a rental building, condominium or cooperative, eight families.
3. It will not transfer operations to a new project/sponsor unless the new project/sponsor is approved by HUD.
4. The proposed permanent housing project is operationally feasible and will provide adequate housing and supportive services to handicapped homeless persons.
5. The proposed activities will not have caused and will not result in the temporary or permanent displacement of any person or entity.
6. It will assess the supportive services required for each resident upon his or her admission to the permanent housing project and reassess each resident's need for supportive services on an ongoing basis during his or her residency.
7. It will provide appropriate supervision for the residents.
8. It agrees to use the structure for permanent housing for a 10-year period following the initial occupancy with funding under this program (or ten years from date expanded services are provided, if applicable).
9. The structure will, after rehabilitation, meet applicable State and local requirements regarding a safe and sanitary condition.
10. It will comply with any applicable State licensing requirements in the operation of the transitional housing.

11. It will repay the full amount of any acquisition rehabilitation advance if it fails to use the structure for permanent housing for a 10-year period following the initial occupancy with funding under this program, unless the Secretary determines that the project is no longer needed as permanent housing for handicapped homeless persons and approves its alternate use for the direct benefit of lower income persons.
12. The funds obligated by HUD under this program cannot be increased but may be decreased in accordance with the provisions in the Supportive Housing Demonstration Program Proposed Rule published in the Federal Register on October 26, 1987.
13. If the structure is taken by eminent domain or seizure during the 10-year period, it will repay the advance to the extent that funds are available from the eminent domain or other proceeding.
14. It will obtain and maintain in force property casualty insurance with HUD named as beneficiary, in an amount at least equal to the amount of the acquisition/rehabilitation advance or the moderate rehabilitation grant.
15. It will require residents to pay rent in accordance with Section 3(a) of the United States Housing Act of 1937 and it will perform all necessary related administrative functions such as income recertification, etc.
16. Use of the proposed structure as permanent housing for handicapped homeless persons is currently permissible under applicable zoning ordinances, regulations or approved variances or will be by 12-30-88.
17. The proposed structure and site are appropriate for (a) the provision of housing and supportive services in a suitable group setting, and (b) the handicapped homeless population to be served.
18. If required by the Notification of Funding Approval, it will form a separate legal entity to be the recipient of funds under this program and it will transfer site control to the new entity.
19. It will develop the permanent housing expeditiously in accordance with the time schedule included in Exhibit 4f of this application.
20. It will not employ, engage for services, award contracts or fund any contractors or subcontractors during any period of their debarment, suspension or placement in ineligibility status.

21. In the acceptance and use of assistance under this Program, it will comply with the policies, guidelines and requirements of OMB Circular Nos. A-110 and A-122.
22. It will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as described in Section 841.330(d) of the Proposed Rule for the Supportive Housing Demonstration Program published in the Federal Register on October 26, 1987.
23. The financial management system used for the permanent housing project will provide for audits in accordance with OMB Circular A-110.
24. The proposed housing is not located in any 100-year floodplain (or 500 year floodplain if 50% or more of the living space in the structure is designed for residents with mobility impairments), as designed by maps prepared by the Federal Emergency Management Agency.
25. It will keep any records and make any reports that HUD may require.
26. The amounts estimated in this application for the cost of acquisition and/or rehabilitation can be supported by documentation which is on file and will be maintained for at least the first three years of operation with funding under this program.
27. No person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, that receives assistance under the demonstration and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or (2) who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, will obtain a personal or financial interest or benefit from the activity, or have any interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

28. A resolution, motion or similar action has been duly adopted or passed as an official act by its governing body, authorizing the submission of this application and the establishment and operation of the proposed housing.
29. It will comply with all applicable requirements resulting from HUD's determination pursuant to Section 106 of the National Historic Preservation Act.

Signature, Authorized Officer/Director

Date

Typed Name and Title

WARNING

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967) shall apply to such statements (18 U.S.C. 1001), among other things, provides that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined no more than 10,000 or imprisoned for not more than five years, or both.

SECTION D - FINANCIALExhibit
NumberDescription

8

Statement of income and expenses and balance sheets for each of the past three years of operation. If you have operated for less than three years, submit this information for your actual period of operation.

This exhibit must include the following certification:

CERTIFIES THIS

(Name of Applicant)

INFORMATION TO BE ACCURATE AND CAN PROVIDE
DOCUMENTATION FOR THE

PERIOD FROM: _____ TO: _____, IF

REQUESTED BY HUD.

Authorized Applicant Signature

Friday
June 24, 1988

Part VI

Department of Health and Human Services

Office of Human Development Services

45 CFR Part 1336

**Native American Programs; Assistance to
Native Hawaiians and Native American
Pacific Islanders; Interim Final Rule and
Notice of Announcement of Availability
of Competitive Financial Assistance for
Native Hawaiian Revolving Loan Fund
Demonstration Project**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1336

Native American Programs; Assistance to Native Hawaiians and Native American Pacific Islanders

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services, Department of Health and Human Services.

ACTION: Interim final rule.

SUMMARY: The Administration for Native Americans is amending its regulations to: (1) Establish the procedures and criteria by which ANA will make a five-year demonstration grant to one agency of the State of Hawaii or to one Native Hawaiian organization to manage a Revolving Loan Fund to promote economic development for Native Hawaiians; and (2) extend eligibility for ANA financial assistance to include Native American Pacific Islanders (including American Samoan Natives).

These changes are in response to recent amendments (Pub. L. 100-175) to the Native Americans Program Act of 1974, Pub. L. 93-644. The effect of the regulatory amendments will be to provide directions to the Native Hawaiian agency or organization responsible for administering the revolving loan fund and to define which Native American Pacific Islanders are eligible for ANA financial assistance.

DATES: Interested persons and agencies are invited to submit written comments concerning these interim final regulations by August 23, 1988.

ADDRESS: Comments should be submitted in writing or delivered to the Commissioner, the Administration for Native Americans, Attention: Jan Phalen, Office of Human Development Services, Department of Health and Human Services, 330 Independence Avenue SW., Room 5300, Washington, DC 20201. ANA's office hours are 9:00 a.m. to 5:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person below.

FOR FURTHER INFORMATION CONTACT: Jan Phalen, ANA, (202) 245-7714.

SUPPLEMENTARY INFORMATION:

Program Purpose

The Native American Programs Act of 1974 (the Act) was originally enacted on January 4, 1975 (Pub. L. 93-644). The Act

was reauthorized in 1978 (Pub. L. 95-568), in 1981 (Pub. L. 97-35), and in 1984 (Pub. L. 98-558). The Native American Programs Amendments Act of 1987, Title V of Pub. L. 100-175, extends programs under the Act through fiscal year 1991 and authorizes appropriations for fiscal years 1987 through 1991.

The Act established the Administration for Native Americans (ANA) within the Department of Health, Education and Welfare (now the Department of Health and Human Services). Until the amendments of 1987, its legislative mandate was to promote economic and social self-sufficiency for American Indians, Alaskan Natives, and Native Hawaiians. Under the 1987 amendments, ANA is also mandated to serve Native American Pacific Islanders.

The ANA mission is to fund programs aimed at providing community or tribal self-sufficiency. The ANA program defines self-sufficiency as the level of development at which a Native American community can control and internally generate resources to provide for the needs of its members and meet its own short and long range social and economic goals. It is the only agency within the Department of Health and Human Services which serves all Native Americans, without regard to where they live or their tribal or group affiliation. ANA's broad mission involves cooperative efforts with other Federal agencies to avoid duplication of programs and to maximize Federal dollars. The program operates under the philosophy that no Federal program, acting alone or in concert with other Federal programs, can achieve self-sufficiency for Native American tribes or groups. ANA programs promote the concept that self-sufficiency can be achieved only when Native Americans plan, design, and operate their own social and economic programs which address the particular needs of their communities.

Financial assistance under section 803(a) of the Act is provided through grants and contracts to a broad range of eligible native entities, including the governing bodies of Indian tribes on Federal and State reservations, Alaskan Native villages and regional corporations, public and private nonprofit agencies serving Native Hawaiians, and Indian organizations in urban and rural off-reservation areas.

ANA programs also authorize training and technical assistance for the purpose of assisting eligible entities in developing and administering projects. Research, demonstration and evaluation activities are authorized to assist in the development of new approaches that will enhance the social and economic

development of local Native American communities.

Recent Legislative Changes

The Native American Programs Amendments of 1987 made several changes, two of which are reflected in these interim final regulations. Under the Act, eligible native entities now include public and nonprofit agencies serving other Native American Pacific Islanders including American Samoan Natives. The legislation also requires ANA to implement a five-year demonstration project to establish a Native Hawaiian Revolving Loan Fund (RLF).

The term Native American Pacific Islander refers to (1) Any Native Hawaiian; (2) any of the indigenous peoples residing in Guam, American Samoa, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands (comprised of the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands); or (3) any individual whose direct ancestors are from Guam, American Samoa, the Northern Mariana Islands or the Trust Territory of the Pacific Islands. (Senate Report 100-140, pp. 9-10)

The first group in this category, Native Hawaiians, is already an eligible entity for purposes of participating in the ANA programs. In the second group only Guam, American Samoa, and the Northern Mariana Islands continue to be territories of the United States and thus eligible under ANA programs. The component jurisdictions of the Trust Territory of the Pacific Islands have chosen their own path toward sovereignty and are not eligible to receive ANA funds under the Act. By the Compact of Free Association, effective November 3, 1986, the Federated States of Micronesia and the Republic of the Marshall Islands ceased to be trust territories of the United States. Palau, the remaining island in the Pacific Trust Territory, approved its constitution in 1980 and is now known as the Republic of Palau. It is currently working toward an independent status. (Senate Report 100-140) Any public and nonprofit agency serving the indigenous peoples residing in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, or any public and nonprofit agency serving individuals whose direct ancestors are from these same islands are eligible to receive financial assistance from ANA.

Another change made by the 1987 amendments is to establish a revolving loan fund for Native Hawaiians. Under these interim final regulations, an

agency of the State of Hawaii or a community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians will be granted funds from ANA to administer a loan program for Native Hawaiian organizations and for individual Native Hawaiians to promote economic development.

ANA assistance to date has mostly been in the form of grants and contracts to a broad range of eligible Native American entities. The loan program complements this assistance by targeting a major problem: direct access to capital. The purpose of this demonstration project is to determine whether Native Americans can benefit from additional community-based assistance in the form of a loan fund.

Waiver of Notice and Comment Procedures

Under section 553(b)(3)(B) of Title 5, United States Code, and section 814(b)(3)(B) of the Act, for the reasons discussed below, the Department finds that good cause exists for concluding that use of notice and comment procedures will impair the effective administration of the program and, therefore, waiving the general notice of proposed rulemaking. An interim final rule is being published based on the requirements in section 508 of Title V of the Continuing Resolution for Fiscal Year 1988 (Pub. L. 100-202). Section 508 specifies that no part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year.

In order to award a grant for FY 1988 we must first publish regulations. The 1987 amendments to the Native American Program were not approved until November 30, 1987, two months after the fiscal year began. Since it takes approximately two weeks for mail to go and come from Hawaii, we would have to allow at least 45 days for comments and additional time for submitting applications. There is not sufficient time to publish a NPRM, receive and review comments, publish a final rule and then publish a program announcement, screen applications and obligate the funds to a grant award in Fiscal Year 1988.

With respect to expanding the definition for eligible applicants to include Native American Pacific Islanders, this is a change that is mandated by section 504 of the 1987 amendments. Therefore, since we have no discretion in the matter, notice and comment would serve no purpose.

In an effort to solicit and consider comments, on January 22, 1988, ANA published a Notice of Intent to Develop

Regulations and Request for Comments, in the *Federal Register* (53 FR 1806). Twenty-two comments were received and they were considered in the development of this interim final rule.

Accordingly, the Secretary has determined that it would be impracticable, unnecessary, and contrary to the public interest to use notice and comment procedures in issuing these regulations. All comments received will be considered, and the rule will be revised if necessary.

Response to the Notice of Intent to Regulate

ANA published in the *Federal Register* on January 22, 1988 a Notice of Intent to Regulate. This notice was issued to comply with the statutory requirement of consultation. ANA received twenty-two comments from three organizations in response to the Notice of Intent to Regulate. Below, ANA has provided a summary of those comments and ANA's response to those comments.

Request to be the Loan Administrator

Comment. One commenter outlined the commenter's organizational qualifications and requested the award of the Revolving Loan Fund grant.

Response. A program announcement will solicit applications from eligible applicants. The grant award will be based on a competitive review process. Any organization or state agency that is eligible may apply to be the Loan Administrator.

Allocation of the Loan Monies

Comment. One commenter requested that 25% of the loan funds be made to Native Hawaiians of 50% aboriginal blood or more.

Response. ANA has no basis to impose such a requirement. The legislation does not limit the making of loans in that manner. ANA has no data to indicate that such a policy is necessary or proper to further the goals of the project.

Non-Federal Share

Comment. One commenter was concerned that ANA would require a 20% non-Federal match of the Revolving Loan Fund.

Response. Section 803(b) of the Statute requires a 20% non-Federal match. The program announcement will reflect this requirement. However, the Commissioner may waive the match requirement based on 45 CFR 1336.50 Native American Program Regulations.

Development Period

Comment. One organization made a number of comments indicating that because this is a demonstration project there must be a period of development and testing before any direct loans may be made.

Response. The program announcement will address the time frame that may be necessary for the start-up of the Revolving Loan Fund. Because of the one-time nature of this project, and because making loans is not such a unique activity, ANA does not believe that any qualified applicant should have to engage in any protracted development and testing prior to making direct loans.

Eligible Borrower

Comment. One commenter requested that "Small Business Concern" be added to the eligibility criteria for a borrower.

Response. ANA finds that the language in the statute sufficiently describes the eligible borrowers to ensure that the target population is reached.

Loan Procedures

Comment. A number of comments were received from one organization suggesting precise points to be covered in the loan procedures of the Revolving Loan Fund, such as defining the purpose of the loans, loan criteria, application procedures and loan review considerations, limits on loan amounts and equity capitalization, collateral for loans, default procedures, and technical assistance to borrowers.

Response. The interim final regulations require that the Loan Administrator, prior to making a loan, develop and submit to the Commissioner of ANA for approval a number of procedural items which are in outline format in the regulations. The above topics are included. ANA expects the Loan Administrator to develop the precise procedures for the Revolving Loan Fund. ANA considers that it is the responsibility of the Loan Administrator, which will be a part of and knowledgeable about the Native Hawaiian community, to develop the specific Revolving Loan Fund procedures and guidelines, which will be consistent with OMB Circulars A-70 and A-129.

Award of the Full \$3 Million

Comment. One commenter asked that the full \$3 million be granted up-front to allow the Loan Administrator to invest excess funds in obligations of the United States.

Response. While the legislation authorizing the RLF also authorizes the appropriation for fiscal years 1988, 1989, and 1990 in the aggregate amount of \$3 million, ANA cannot award those funds until there is an appropriation for those funds; \$957,000 has been appropriated for Fiscal Year 1988. Payments under the grant will be handled in accordance with existing Government-wide grant payment requirements, which the Department has incorporated in 45 CFR Parts 74 and 92.

Interest Rate

Comment. One commenter suggested that the interest rate charged for loans be adjustable on a yearly basis.

Response. The statute prescribes the means for setting interest rates.

Close of the Five-Year Demonstration Period

Comment. One commenter suggests that the specific date of the end of the five-year period be specified.

Response. The interim final regulations do specify that date as November 29, 1992.

Borrowers' Records, Reports and Inspection of the Premises

Comment. One commenter proposed requirements for borrowers in relation to the inspection by the RLF of the records and premises of the borrower and the submission to the RLF of specific reports by the borrower.

Response. Again, it is ANA's expectation that the Loan Administrator will develop these precise requirements and submit them for the Commissioner's approval. Any specific requirements by the RLF for the borrower should be reflected in the terms of the Loan Agreement, not in these regulations.

Separate Account

Comment. One commenter asked that "separate account" be clarified.

Response. The requirement that the Loan Fund be established as a separate account means that the Loan Fund has a separate common accounting number for Federal accounting purposes.

Beyond the Five Year Period

Comment. One commenter asked that the costs of loan monitoring and debt collection beyond the five-year period be recognized and allocated.

Response. This concern is addressed in the interim final regulations in § 1336.73.

Regulatory Provisions

The interim final regulations consist of two parts. The first adds the definitions of Native American Pacific Islander to

§ 1336.30(c), *Eligibility*. The second creates a new Subpart F, Native Hawaiian Revolving Loan Fund Demonstration Project.

The loan fund will be managed by an agency of the State of Hawaii or a community-based Native Hawaiian organization to make loans to Native Hawaiian individuals or to Native Hawaiian organizations. The interim final regulations include the procedures the managing agency must follow in the making of such loans, the collection of the loans, and the reporting requirements.

ANA used revolving loan fund regulations and procedures from the Bureau of Indian Affairs (BIA), the Economic Development Administration (EDA), and the Office of Community Services (OCS), HHS, as models for the development of these interim final regulations since the experience of the other agencies is that they are sufficient for the responsible and effective administration of such revolving loan funds. It is ANA's intent to be precise about the requirements which the Loan Administrator must meet prior to making a direct loan in order to shorten the time needed for development of the fund procedures, to lengthen the time available in the five-year period in which loans may be made, and to ensure consistency with the Administration's program to improve credit management.

Section-by-Section Discussion of the Regulations

Section 1336.60 Purpose of the Subpart

This section addresses the purpose of the new subpart.

Section 1336.61 Purpose of the Revolving Loan Fund

This section defines the purpose of the RLF demonstration project. It specifies how the loan fund is to be used to accomplish the purpose specified in the Act. The primary purpose of the RLF is to provide to Native Hawaiian businesses financial assistance which is otherwise unavailable from financial agencies or institutions.

Section 1336.62 Definitions

This section defines certain key words that are used in the subpart. They include such terms as applicant, loan administrator, Native Hawaiian, economic enterprise.

The requirement that the businesses applying for and obtaining direct loans from the RLF be 100 percent Native Hawaiian-owned is necessary to ensure that the loans made have the greatest impact on the Native Hawaiian community.

Section 1336.63 General Responsibilities of the Loan Administrator

This section specifies the requirements the Loan Administrator must meet in developing and obtaining approval for the operating plans for the RLF. ANA believes these minimum requirements are a necessary basis for the operation of a revolving loan fund. They are similar to other governmental requirements for revolving loan funds. ANA drew on the prior experience and expertise of BIA, EDA and OCS in developing these and other requirements.

Section 1336.64 Development of Goals and Strategies: Responsibilities of the Loan Administrator

This section specifies the goals and strategies a Loan Administrator must develop to obtain the Commissioner's approval prior to making a direct loan. The goals of a loan fund are necessary to provide an explication of purposes and intent for the RLF to the community it serves. ANA believes that before an agency or organization can support economic development for its members, it must establish short and long range goals and specific economic and administrative strategies which become the foundation for the setting of priorities in making direct loans. The goals and strategies of the RLF then become the basis for the overall operation of the RLF.

Section 1336.65 Staffing and Organization of the Fund: Responsibilities of the Loan Administrator

This section addresses the staffing of the RLF, loan review committee and board and the responsibilities and procedures which must be developed by the Loan Administrator and approved by the Commissioner prior to making loans. ANA believes these four organizational requirements are the minimum that must be specified to assure an organizational structure/basis for the operation of the RLF.

Section 1336.66 Procedures and Criteria for Administration of the Revolving Loan Fund: Responsibilities of the Loan Administrator

This section describes those loan making processes which must be developed by the Loan Administrator and approved by the Commissioner before loans may be made, including the preapplication process, the screening of loan applications, the loan application package, the criteria for evaluation of the loan applications, procedures for the

loan decision-making process and guidelines and documents for the loan closing process. ANA believes that adequate loan procedures must be developed prior to loans being made. Clear loan making procedures provide a legal basis for the Loan Administrator's staff to follow in processing loans. It is the Department's intent that the loan monies be made available to the community as speedily as possible and with as much assurance of 100% payback to ensure that the principal is available to be loaned again. Having an approved set of procedures with which to work means that the making of loans can be begun soon after the grant award is made.

Section 1336.67 Security and Collateral: Responsibilities of the Loan Administrator

Collateral is not required by statute for each loan made, but the Loan Administrator may require collateral if he deems it necessary to secure the loan. This section provides guidance to the Loan Administrator on the type of collateral which may be required from a borrower. The taking of collateral by the Loan Administrator will be one of many factors considered in the loan making process. Additional security may also be required after the loan is made at the discretion of the Loan Administrator.

Section 1336.68 Defaults, Uncollectible Loans, Liquidations: Responsibilities of the Loan Administrator

This section requires that the Loan Administrator develop and obtain the Commissioner's approval for procedures pertaining to defaults, uncollectible loans and liquidations. A copy of these procedures must be given to each applicant at the time the loan application is made.

The statute requires the Loan Administrator to notify the Commissioner of uncollectible loans or loans collectible only at an unreasonable cost and to make recommendations for further action. The actions that the Commissioner may direct the Loan Administrator to take concerning such loans are specified in paragraph (d). It is not ANA's intent to actively seek the sale or takeover of assets of a business in a loan default, but rather to encourage the Loan Administrator to provide competent loan servicing and technical assistance to minimize the number of loan defaults.

Section 1336.69 Reporting Requirements: Responsibilities of the Loan Administrator

This section specifies the reports which ANA requires the Loan

Administrator to maintain internally and those which must be submitted to ANA on a quarterly basis. The primary purpose of these requirements is that the Loan Administrator must maintain sufficient files to provide competent loan decision making and loan servicing to its clients in order to establish and operate a professional loan fund comparable to other lending agencies or institutions in Hawaii.

In addition, ANA must report to Congress at the end of the second and fourth year of the demonstration project. The reports to Congress must include the Department's views and recommendations regarding the effectiveness of the demonstration project, whether the demonstration project should be expanded to other groups eligible for assistance under ANA's legislation, and whether the duration of the project should be extended. ANA must be kept informed of the status of the RLF and the progress being made in order to make recommendations to Congress.

Section 1336.70 Technical Assistance: Responsibilities of the Loan Administrator

By statute, the Loan Administrator must provide competent management and technical assistance to borrowers. This section addresses that technical assistance. The purpose of the assistance is to increase the efficacy of the borrower's business expertise and decrease the number of loan defaults or at-risk businesses. Costs for the technical assistance provided may be paid from the RLF.

Section 1336.71 Administrative Costs

This section allows administrative costs of the fund to be paid from the RLF. However, it is ANA's intent that funds in the RLF be used to the maximum extent possible for direct loans rather than for administrative costs. The program announcement will require the grantee to provide a 20% non-Federal match. The matching funds from the grantee will be used to supplement any funds from the RLF that must be used for administrative costs. The grant award document will set forth the allowable administrative costs during the five-year demonstration period.

Section 1336.72 Fiscal Requirements

Much of the language of this section is taken from Section 803A of the Act. The section clarifies what use will be made of the monies in the fund during the five-year project, at the end of the project period, and after the project terminates. Of special note is the requirement that

the Loan Administrator assume responsibility for collection of outstanding loans after the five-year project ends and without additional financial assistance from ANA. At the end of the five-year period ANA will make a determination of what monies from the fund in the way of interest charges, late fees, and investment income that are in the Fund at that time will be necessary to collect loan payments until all loans are closed. That sum of money will be made available to the Loan Administrator. All other monies currently in the Loan Fund and subsequently collected by the Fund will be returned to the Treasury of the United States.

Section 1336.73 Eligible Borrowers

Paragraph (d) of this section specifies the eligible borrowers from the loan fund. ANA believes this list represents all categories of individuals and entities eligible to apply for loans. Our intent was not to omit any category of eligible applicants and the interim final regulations will be amended if necessary to include additional categories. An eligible borrower must be able to show that it has been unable to obtain financing from other sources on reasonable terms and conditions.

Section 1336.74 Time Limits and Interest

Section 803A of the Act specifies time limits on loans and the rate of interest to be charged. The language in this section is taken from the statute. The loans made from the fund may not exceed a five year period. Interest charged is to be at a rate of two percent below the average market yield on the most recent public offering of United States Treasury bills occurring before the date on which the loan is made.

Section 1336.75 Allowable Loan Activities

This section lists examples of activities which are eligible for loans. It is expected that the Loan Administrator, subject to the approval of the Commissioner, will extend the list to include other activities. The activities in this list are from the EDA Revolving Loan Fund guidelines and from the OCS Revolving Loan Fund regulations. ANA believes that these and other similar activities carry out the intent of the Revolving Loan Fund, to promote economic development for Native Hawaiians. ANA thinks these are types of activities which will foster the development and growth of the Native Hawaiian community economically and as a result will increase the number of

jobs in the community. Of course, we invite comment and hope that the public and the Loan Administrator will suggest other areas of allowable loan activities.

Section 1336.76 Unallowable Loan Activities

This section lists activities which are ineligible for loans under the Loan Fund. Again, it is not an all inclusive list. The list is similar to the one in the EDA's Revolving Loan Fund guidelines. ANA adopted the list, with some modifications, because it will provide some guidance for the Loan Administrator in developing the final list of unallowable loan activities.

Loans which support activities moved from the State of Hawaii do not support the purpose of the demonstration project, which is to provide direct loans to Native Hawaiian businesses and individuals to expand the Native Hawaiian economic base in Hawaii.

ANA is interested in the Loan Administrator lending money to start or expand businesses, to increase jobs, and to assist a business meet cash and credit needs. ANA is not interested in providing funds for passive business activities, such as investment. Using the loan money to invest in higher interest accounts or to relend to another borrower does not fulfill the intent of the legislation.

The purchase of land or buildings or the construction of buildings are unallowable loan activities because of the size of the Revolving Loan Fund. The cost of construction and real estate in Hawaii is such that the relatively small amount in the Fund would not make much impact on the Native Hawaiian community as a whole if these activities were allowed. The prohibition on the construction of buildings does not prohibit loan money being used for the indirect costs of a construction company. The money just cannot be used for actual construction costs.

The purchasing of equity in private businesses is an unallowable activity because ANA does not believe this purpose is in accordance with the intent of the Revolving Loan Fund. If a business needs additional financing, it should apply for a loan from the RLF directly. It is not the goal of the RLF to loan money to an intermediary to buy equity in or make loans to an existing business.

Section 1336.77 Recovery of Funds

This section specifically provides that disallowances of costs and losses to the Loan Fund will be taken by the Department under appropriate circumstances. While the Department believes that such authority exists under

existing statutory and regulatory authority, it was decided to expressly provide for it in the regulations due to the unique nature of this program. The regulation provides that disallowances will be taken whenever the Loan Administrator has violated appropriate provisions of 45 CFR Part 74, Administration of Grants, as well as for violations of the Act, specific provisions of these regulations, other applicable provisions of Federal and State law, or any combination of such violations. Whenever a disallowance is taken, the Loan Administrator will have the right to appeal to the Departmental Grant Appeals Board. If a disallowance is not appealed, or if it is upheld on appeal by the Grant Appeals Board, the Loan Administrator will have to repay to the Loan Fund, from non-Federal sources, whatever amount has been disallowed.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more or certain other specified effects. These interim final regulations will affect only the grantee in Hawaii selected to administer the RLF. The basic requirements of the program are established by the statute, not these regulations. Therefore, the Department concludes that these interim final regulations are not major rules within the meaning of the Executive Order because they do not have an effect on the economy of \$100 million or more or meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act (5 U.S.C. Channel 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small business. For each rule with a significant economic impact on a substantial number of "small entities," we prepare an analysis describing the rule's impact on small entities. The impact of these interim final regulations will be on the grantee selected as the Loan Administrator in Hawaii, which is not considered a "small entity" within the meaning of the Act. For this reason, the Secretary certifies that this interim final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of

Management and Budget for review and approval any reporting or recordkeeping requirements contained in a proposed or final rule.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, we will submit a copy of these interim final regulations to the Office of Management and Budget (OMB) for its review of these information collection requirements. This interim final rule contains information collection requirements in §§ 1336.63(b), 1336.66(c) and 1336.69(b) which will be submitted to OMB for approval. There will be no specific format for the submittal of this report as long as it meets the requirements of the Act and these regulations.

Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Desk Officer for HHS.

List of Subjects in 45 CFR Part 1336

Native American Pacific Islander, Native Hawaiian Revolving Loan Fund, Economic development.

For the reasons set forth in the preamble, Title 45 of the Code of Federal Regulations is amended as follows:

PART 1336—NATIVE AMERICAN PROGRAMS

1. The authority citation for Part 1336 is revised to read as follows:

Authority: 42 U.S.C. 2991, *et seq.*

2. Section 1336.30 is amended by adding a new paragraph (c) to read as follows:

§ 1336.30 Eligibility.

* * * * *

(c) Financial assistance under section 803 may be made to public and nonprofit private agencies serving native peoples from American Samoa, Guam and the Northern Mariana Islands subject to the availability of funds.

3. Part 1336 is amended by adding a new Subpart F to read as follows:

Subpart F—Native Hawaiian Revolving Loan Fund Demonstration Project

Sec.

1336.60 Purpose of this subpart.
1336.61 Purpose of the Revolving Loan Fund.
1336.62 Definitions.
1336.63 General responsibilities of the Loan Administrator.

Sec.

- 1336.64 Development of goals and strategies: Responsibilities of the Loan Administrator.
- 1336.65 Staffing and organization of the Revolving Loan Fund: Responsibilities of the Loan Administrator.
- 1336.66 Procedures and criteria for administration of the Revolving Loan Fund: Responsibilities of the Loan Administrator.
- 1336.67 Security and collateral: Responsibilities of the Loan Administrator.
- 1336.68 Defaults, uncollectible loans, liquidations: Responsibilities of the Loan Administrator.
- 1336.69 Reporting requirements: Responsibilities of the Loan Administrator.
- 1336.70 Technical assistance: Responsibilities of the Loan Administrator.
- 1336.71 Administrative costs.
- 1336.72 Fiscal requirements.
- 1336.73 Eligible borrowers.
- 1336.74 Time limits and interest on loans.
- 1336.75 Allowable loan activities.
- 1336.76 Unallowable loan activities.
- 1336.77 Recovery of funds.

Authority: 88 Stat. 2324, 101 Stat. 976 (42 U.S.C. 2991, *et seq.*).

§ 1336.60 Purpose of this subpart.

(a) The Administration for Native Americans will award a five-year demonstration grant to one agency of the State of Hawaii or to one community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians to develop procedures for and to manage a revolving loan fund for Native Hawaiian individuals and organizations in the State of Hawaii. (Section 830A(a)(1))

(b) This subpart sets forth the requirements that the organization or agency selected to administer the revolving loan fund must meet and the terms and conditions applicable to loans made to borrowers from the loan fund.

§ 1336.61 Purpose of the Revolving Loan Fund.

The purpose of the Native Hawaiian Revolving Loan Fund is to provide funding not available from other sources on reasonable terms and conditions to:

- (a) Promote economic activities which result in expanded opportunities for Native Hawaiians to increase their ownership of, employment in, or income from local economic enterprise;
- (b) Assist Native Hawaiians to overcome specific gaps in local capital markets and to encourage greater private-sector participation in local economic development activities; and
- (c) Increase capital formation and private-sector jobs for Native

Hawaiians. (Section 803A(a)(1)(A))

§ 1336.62 Definitions.

Applicant means an applicant for a loan from the Native Hawaiian Revolving Loan Fund. An applicant must be an individual Native Hawaiian or a Native Hawaiian organization. If the applicant is a group of people organized for economic development purposes, the applicant ownership must be 100% Native Hawaiian.

Commissioner means the Commissioner of the Administration for Native Americans.

Cooperative association means an association of individuals organized pursuant to State or Federal law, for the purpose of owning and operating an economic enterprise for profit, with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized pursuant to State or Federal law, as a corporation, with or without stock, for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to make scheduled payments on a loan, failure to obtain the lender's approval for disposal of assets mortgaged as security for a loan, or failure to comply with the covenants, obligations or other provisions of a loan agreement.

Economic enterprise means any Native Hawaiian-owned, commercial, industrial, agricultural or other business activity established or organized for the purpose of profit.

Financing statement means the document filed or recorded in country or State offices pursuant to the provisions of the Uniform Commercial Code as enacted by Hawaii notifying third parties that a lender has a lien on the chattel and/or crops of a borrower.

Loan Administrator means either the agency of the State of Hawaii or the community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians selected to administer the revolving loan fund.

Mortgages mean mortgages and deeds of trust evidencing an encumbrance of trust or restricted land, mortgages and security agreements executed as evidence of liens against crops and chattels, and mortgages and deeds of trust evidencing a lien on leasehold interests.

Native Hawaiian means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

Partnership means two or more persons engaged in the same business, sharing its profits and risks, and

organized pursuant to state or Federal law.

Profits mean the net income earned after deducting operating expenses from operating revenues.

Revolving Loan Fund (RLF) means all funds that are now or are hereafter a part of the Native Hawaiian Revolving Loan Fund authorized by the Native American Programs Act of 1974, as amended in 1987, and supplemented by sums collected in repayment of loans made, including interest or other charges on loans and any funds appropriated pursuant to Section 803A of the Native American Programs Act of 1974, as amended.

§ 1336.63 General responsibilities of the Loan Administrator.

(a) The Loan Administrator will make loans to Native Hawaiian organizations and to individual Native Hawaiians for the purpose or promoting economic development among Native Hawaiians in the State of Hawaii. (Section 803(a)(1)(A).)

(b) Prior to any loan being made from the RLF, the Loan Administrator will develop and obtain the Commissioner's approval of the following organizational and administrative materials necessary to implement the RLF:

- (1) Goals and strategies;
- (2) Staffing and organizational responsibilities;
- (3) Preapplication and loan screening processes;
- (4) Loan procedures including application forms;
- (5) Criteria and procedures for loan review, evaluation and decision-making;
- (6) Loan closing procedures; and
- (7) Procedures for loan servicing, monitoring and provision of technical assistance.

(c) The Loan Administrator will set up fiscal management procedures to satisfy the requirements of section 803A of the Native American Programs Act and this subpart.

(d) The Loan Administrator must set up a separate account for the RLF into which all payments, interest, charges, and other amounts collected from loans made from the RLF will be deposited.

§ 1336.64 Development of goals and strategies: Responsibilities of the Loan Administrator.

(a) Prior to the approval of any direct loan under the RLF, the Loan Administrator will develop and obtain the Commissioner's approval for a clear and comprehensive set of goals and strategies for the RLF. The goals will specify the results the Loan Administrator expects to accomplish

from the Revolving Loan Fund, define the RLF's role and responsibilities for potential users, and serve as the basis for the development of an organizational strategy and operating plan. The RLF strategies will provide the Loan Administrator with a sound understanding of the economic and market conditions within the Native Hawaiian community.

(b) The following factors shall be considered by the Loan Administrator in developing the RLF's goals:

(1) Employment needs of the local population;

(2) Characteristics of the local economic base;

(3) Characteristics of the local capital base and the gaps in the local availability of business capital;

(4) Local resources for economic development and their availability; and

(5) Goals and strategies of other local organizations involved in economic development.

(c) The loan fund strategies developed by the Revolving Loan Fund must include the following:

(1) *Business Targeting Strategy*: to determine which types of businesses are to be targeted by the loan fund. The Loan Administrator will develop procedures to ensure that the loans made are directed to Native Hawaiians.

(2) *Financing Strategy*: to determine the types of financing the loan fund will provide;

(3) *Business Assistance Strategy*: to identify the possible or potential management problems of a borrower and develop a workable plan for providing borrowers with the needed management assistance;

(4) *Marketing Strategy*: to generate applications from potential borrowers and to generate the support and participation of local financial institutions;

(5) *Capital Base Management Strategy*: to develop and allocate the financial resources of the fund in the most effective possible way to meet the need or demand for financing; and

(6) *Accountability Strategy*: to develop policies and mechanisms to hold borrowers accountable for providing the public benefits promised (e.g. jobs) in return for financing; to ensure that, until expenditure, loan proceeds are held by the borrower in secured, liquid financial instruments; to hold borrowers accountable for upholding the commitments made prior to the loan; and to develop the methods used by the RLF to enforce these commitments.

§ 1336.65 Staffing and organization of the Revolving Loan Fund: Responsibilities of the Loan Administrator.

Prior to the approval of any direct loan under the RLF, the Loan Administrator must develop and obtain the Commissioner's approval for the RLF's organization table, including:

(a) The structure and composition of the Board of Directors of the RLF;

(b) The staffing requirements for the RLF, with position descriptions and necessary personnel qualifications;

(c) The appointments to the advisory loan review committee; and

(d) The roles and responsibilities of the Board, staff and loan review committee.

§ 1336.66 Procedures and criteria for administration of the Revolving Loan Fund: Responsibilities of the Loan Administrator.

Prior to the approval of any direct loan under the RLF, the Loan Administrator must develop and obtain the Commissioner's approval for the following procedures:

(a) *Preapplication and loan screening procedures*. Some factors to be considered in the loan screening process are:

(1) General eligibility criteria;

(2) Potential economic development criteria;

(3) Indication of business viability;

(4) The need for RLF financing; and

(5) The ability to properly utilize financing.

(b) *Application process*. The application package includes forms, instructions, and policies and procedures for the loan application. The package must also include instructions for the development of a business and marketing plan and a financing proposal from the applicant.

(c) *Loan evaluation criteria and procedures*. The loan evaluation must include the following topics:

(1) General and specific business trends;

(2) Potential market for the product or service;

(3) Marketing strategy;

(4) Management skills of the borrower;

(5) Operational plan of the borrower;

(6) Financial controls and accounting systems;

(7) Financial projections; and

(8) Structure of investment and financing package.

(d) *Loan decision-making process*. Decision-making on a loan application includes the recommendations of the staff, the review by the loan review committee and the decision by the Board.

(e) *Loan closing process*. The guidelines for the loan closing process include the finalization of loan terms; conditions and covenants; the exercise of reasonable and proper care to ensure adherence of the proposed loan and borrower's operations to legal requirements; and the assurance that any requirement for outside financing or other actions on which disbursement is contingent are met by the borrower.

(f) *Loan closing documents*.

Documents used in the loan closing process include:

(1) *Term Sheet*: an outline of items to be included in the loan agreement. It should cover the following elements:

(i) Loan terms;

(ii) Security interest;

(iii) Conditions for closing the loan;

(iv) Covenants, including reporting requirements;

(v) Representations and warranties;

(vi) Defaults and remedies; and

(vii) Other provisions as necessary.

(2) *Closing Agenda*: an outline of the loan documents, the background documents, and the legal and other supporting documents required in connection with the loan.

(g) *Loan servicing and monitoring*. The servicing of a loan will include collections, monitoring, and maintenance of an up-to-date information system on loan status.

(1) *Collections*: To include a repayment schedule, invoice for each loan payment, late notices, provisions for late charges.

(2) *Loan Monitoring*: To include regular reporting requirements, periodic analysis of corporate and industry information, scheduled telephone contact and site visits, regular loan review committee oversight of loan status, and systematic internal reports and files.

§ 1336.67 Security and collateral: Responsibilities of the Loan Administrator.

The Loan Administrator may require any applicant for a loan from the RLF to provide such collateral as the Loan Administrator determines to be necessary to secure the loan. (Section 803A(b)(3))

(a) *As a Credit Factor*. The availability of collateral security normally is considered an important factor in making loans. The types and amount of collateral security required should be governed by the relative strengths and weaknesses of other credit factors. The taking of collateral as security should be considered with respect to each loan. Collateral security should be sufficient to provide the lender reasonable protection from loss

in the case of adversity, but such security or lack thereof should not be used as the primary basis for deciding whether to extend credit.

(b) *Security Interests.* Security interests which may be taken by the lender include, but are not limited to, liens on real or personal property, including leasehold interests; assignments of income and accounts receivable; and liens on inventory or proceeds of inventory sales as well as marketable securities and cash collateral accounts.

(1) *Motor vehicles.* Liens ordinarily should be taken on licensed motor vehicles, boats or aircraft purchased hereunder in order to be able to transfer title easily should the lender need to declare a default or repossess the property.

(2) *Insurance on property secured.* Hazard insurance up to the amount of the loan or the replacement value of the property secured (whichever is less) must be taken naming the lender as beneficiary. Such insurance includes fire and extended coverage, public liability, property damage, and other appropriate types of hazard insurance.

(3) *Appraisals.* Real property serving as collateral security must be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique (including standard reference manuals), and this valuation shall be described in the loan file.

(c) *Additional security.* The lender may require collateral security or additional security at any time during the term of the loan if after review and monitoring an assessment indicates the need for such security.

§ 1336.68 Defaults, uncollectible loans, liquidations: Responsibilities of the Loan Administrator.

(a) Prior to making loans from the RLF, the Loan Administrator will develop and obtain the Commissioner's approval for written procedures and definitions pertaining to defaults and collections of payments. (Section 803A(b)(4))

(b) The Loan Administrator will provide a copy of such procedures and definitions to each applicant for a loan at the time the application is made. (Section 803A(b)(4))

(c) The Loan Administrator will report to the Commissioner whenever a loan recipient is 90 days in arrears in the repayment of principal or interest or has failed to comply with the terms of the loan agreement. After making reasonable efforts to collect amounts payable, as specified in the written procedures, the Loan Administrator

shall notify the Commissioner whenever a loan is uncollectible at reasonable cost. The notice shall include recommendations for future action to be taken by the Loan Administrator. (Section 803A(c)(1) and (2))

(d) Upon receiving such notices, the Commissioner will, as appropriate, instruct the Loan Administrator:

(1) To demand the immediate and full repayment of the loan;

(2) To continue with its collection activities;

(3) To cancel, adjust, compromise, or reduce the amount of such loan;

(4) To modify any term or condition of such loan, including any term or condition relating to the rate of interest or the time of payment of any installment of principal or interest, or portion thereof, that is payable under such loan;

(5) To discontinue any further advance of funds contemplated by the loan agreement;

(6) To take possession of any or all collateral given as security and in the case of individuals, corporations, partnerships or cooperative associations, the property purchased with the borrowed funds;

(7) To prosecute legal action against the borrower or against the officers of the borrowing organization;

(8) To prevent further disbursement of credit funds under the control of the borrower;

(9) To assign or sell at a public or private sale, or otherwise dispose of for cash or credit any evidence of debt, contract, claim, personal or real property or security assigned to or held by the Loan Administrator; or

(10) To liquidate or arrange for the operation of economic enterprises financed with the revolving loan until the indebtedness is paid or until the Loan Administrator has received acceptable assurance of its repayment and compliance with the terms of the loan agreement. (Section 803A(c)(2)(B))

§ 1336.69 Reporting requirements: Responsibilities of the Loan Administrator.

(a) The Loan Administrator will maintain the following internal information and records:

(1) For each borrower: The loan repayment schedule, log of telephone calls and site visits made with the date and the items discussed, correspondence with the borrower, progress reports and analyses.

(2) Monthly status of all outstanding loans, noting all overdue payments.

(3) Monthly status of the investments of the revolving loan fund monies not currently used for loans.

(4) Monthly records on the revenue generated by the loan fund from interest charges and late charges.

(5) Monthly administrative costs of the management of the loan fund and the sources of the monies to support the administrative costs.

(b) The Loan Administrator must submit a quarterly report to the Commissioner. The report may be in a format of the choice of the Loan Administrator as long as it includes at a minimum the following topics:

(1) For each borrower:

(i) Name of the borrower;

(ii) Economic development purpose(s) of the loan;

(iii) Financing of the loan by source;

(iv) Loan status (current/delinquent/paid);

(v) Principal and interest outstanding; and

(vi) Amount delinquent/defaulted, if any.

(2) Financial status of the RLF:

(i) Administrative cost expenditures;

(ii) Level of base capital;

(iii) Level of current capital;

(iv) Amount of ANA funding;

(v) Matching share;

(vi) Other direct funding of the RLF;

(vii) Program income, including interest on loans, earnings from investments, fee charges;

(viii) Loans made;

(ix) Losses on loans;

(x) Principal and interest outstanding;

(xi) Loans repaid;

(xii) Delinquent loans; and

(xiii) Collateral position of the RLF (the value of collateral as a percent of the outstanding balance on direct loans).

(c) The Loan Administrator must submit a semi-annual report to the Commissioner containing an analysis of the RLF progress to date.

(d) The Loan Administrator must submit to the Department a quarterly SF-269, Financial Status Report, or any equivalent report required by the Department.

§ 1336.70 Technical assistance: Responsibilities of the Loan Administrator.

The Loan Administrator will assure that competent management and technical assistance is available to the borrower consistent with the borrower's knowledge and experience and the nature and complexity of the economic enterprise being financed by the RLF. Consultants, RLF staff, and members of the loan review committee and Board may be used to assist borrowers. (Section 803A(d)(1)(B))

§ 1336.71 Administrative costs.

Reasonable administrative costs of the RLF may be paid out of the loan fund. The grant award agreement between the Loan Administrator and ANA will set forth the allowable administrative costs of the loan fund during the five-year demonstration period. (Sections 803A(a)(2) and 803A(d)(1)(A))

§ 1336.72 Fiscal requirements.

(a) Any portion of the revolving loan fund that is not required for expenditure must be invested in obligations of the United States or in obligations guaranteed or insured by the United States.

(b) Loans made under the RLF will be for a term that does not exceed five years.

(c) No loan may be made by the RLF after November 29, 1992, the close of the five-year period of the demonstration project. (Section 803A(b)(6))

(d) All monies that are in the revolving loan fund on November 29, 1992 and that are not otherwise needed (as determined by the Commissioner) to carry out the provisions of this subpart must be deposited in the Treasury of the United States as miscellaneous receipts. The Commissioner will make this determination based on reports, audits and other appropriate documents as determined by the Commissioner. The Commissioner will take into consideration the costs necessary to collect loans outstanding beyond November 29, 1992, which costs may be paid from interest and loan charges collected by the Fund and in the Fund as of November 29, 1992. To use monies in the Fund for the costs of collection after November 29, 1992, the Commissioner must give prior approval for such use.

(e) All monies deposited in the revolving loan fund after November 29, 1992 must be deposited in the Treasury of the United States as miscellaneous receipts.

(f) After November 29, 1992, the Loan Administrator will assume responsibility for the collection of all outstanding loans without additional financial assistance from ANA.

§ 1336.73 Eligible borrowers.

(a) Loans may be made to eligible applicants only if the Loan Administrator determines that the applicant is unable to obtain financing on reasonable terms and conditions from other sources such as banks, Small Business Administration, Production Credit Associations, Federal Land Banks; and

(b) Only if there is a reasonable prospect that the borrower will repay

the loan. (Section 803A(b)(1) (A) and (B))

(c) The Loan Administrator will determine an applicant's inability to obtain financing elsewhere on reasonable terms and conditions from documentation provided by the applicant.

(d) Those eligible to receive loans from the revolving loan fund are:

- (1) Native Hawaiian individuals.
- (2) Native Hawaiian non-profit organizations.
- (3) Native Hawaiian businesses.
- (4) Native Hawaiian cooperative associations.
- (5) Native Hawaiian partnerships.
- (6) Native Hawaiian associations.
- (7) Native Hawaiian corporations.

§ 1336.74 Time limits and interest on loans.

(a) Loans made under the RLF will be for a term that does not exceed 5 years.

(b) Loans will be made to approved borrowers at a rate of interest that is 2 percentage points below the average market yield on the most recent public offering of United States Treasury bills occurring before the date on which the loan is made. (Section 803A(b)(2) (A) and (B))

§ 1336.75 Allowable loan activities.

The following are among those activities for which a loan may be made from the RLF:

(a) The establishment or expansion of businesses engaged in commercial, industrial or agricultural activities, such as farming, manufacturing, construction, sales, service;

(b) The establishment or expansion of cooperatives engaged in the production and marketing of farm products, equipment, or supplies; the manufacture and sale of industrial, commercial or consumer products; or the provision of various commercial services;

- (c) Business or job retention;
- (d) Small business development;
- (e) Private sector job creation; and
- (f) Promotion of economic diversification, e.g. targeting firms in growth industries that have not previously been part of a community's economic base.

§ 1336.76 Unallowable loan activities.

The following activities are among those activities not eligible for support under the revolving loan fund:

(a) Loans to the Loan Administrator or any representative or delegate of the Loan Administrator (Section 803A(b)(5));

(b) Loans which would create a potential conflict-of-interest for any officer or employee of the Loan Administrator; loan activities which

directly benefit these individuals, or persons related to them by marriage, or law.

(c) Eligible activities which are moved from the State of Hawaii;

(d) Investing in high interest account, certificates of deposit or other investments;

(e) Relending of the loan amount by the borrower;

(f) The purchase of land or buildings;

(g) The construction of buildings; and

(h) Purchasing or financing equity in private businesses.

§ 1336.77 Recovery of funds.

(a) Funds provided under this Subpart may be recovered by the Commissioner for both costs of administration of the Loan Fund and losses incurred by the Fund (hereafter jointly referred to as "costs") under the following circumstances:

(1) Whenever claimed costs are unallowable under the Native Americans Programs Act of 1974, as amended, or under 45 CFR Part 74, or both;

(2) For costs for loans made to ineligible persons or entities as defined in § 1336.73;

(3) For costs connected with the default of a borrower when the Loan Administrator has failed to perfect any security interest or when the Loan Administrator has failed to obtain collateral when provision of collateral is a condition of a loan.

(4) For costs connected with any default when the Loan Administrator has failed to perform a proper check of an applicant's credit;

(5) For costs whenever the Loan Administrator has failed to notify the Commission of loans at risk as required by § 1336.68 of these regulations, and as may be required by the procedures approved pursuant to that regulation;

(6) For costs whenever the Loan Administrator has failed to follow properly instructions provided to it by the Commissioner pursuant to § 1336.68(d) of these regulations;

(7) For costs which are incurred due to faulty record keeping, reporting, or both; or

(8) For costs which are in connection with any activity or action which violates any Federal or State law or regulation not specifically identified in these regulations.

(b) Whenever the Commissioner determines that funds have been improperly utilized or accounted for, he will issue a disallowance pursuant to the Act and to 45 CFR Part 74 and will notify the Loan Administrator of its

appeal rights, which appeal must be taken pursuant to 45 CFR Part 16.

(c) If a disallowance is taken and not appealed, or if it is appealed and the disallowance is upheld by the Departmental Grant Appeals Board, the Loan Administrator must repay the disallowed amount to the Loan Fund within 30 days, such repayment to be made with non-Federal funds.

(Catalog of Federal Domestic Assistance Number 13.612)

Date: May 17, 1988

Sydney Olson,

Assistant Secretary for Human Development Services.

Approved: May 23, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-14296 Filed 6-23-88; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Announcement No. 13612-8833]

Native Hawaiian Revolving Loan Fund Demonstration Project; Program Announcement

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services (OHDS), Department of Health and Human Services.

ACTION: Announcement of availability of competitive financial assistance for a Native Hawaiian Revolving Loan Fund Demonstration Project.

SUMMARY: The Administration for Native Americans announces the availability of fiscal year 1988 funds for a Native Hawaiian Revolving Loan Fund Demonstration project. The financial assistance provided by ANA is designed to implement a five-year demonstration project, financed by Fiscal Year 1988 appropriations, to establish a Native Hawaiian Revolving Loan Fund to promote economic development for Native Hawaiians.

DATE: The closing date for receipt of applications is August 23, 1988.

FOR FURTHER INFORMATION CONTACT: Darryl Summers (202) 245-7730 or Jan Phalen (202) 245-7714, Administration for Native Americans, 330 Independence Avenue, SW., Washington, DC 20201-0001.

SUPPLEMENTARY INFORMATION:

A. Introduction and Program Purpose

The purpose of this program announcement is to announce the availability of financial assistance for the establishment and management of a Native Hawaiian Revolving Loan Fund Demonstration Project. Funds will be awarded under section 803A of the Native American Programs Act of 1974, as amended Pub. L. 93-644, 88 Stat 2324, U.S.C. 2991b.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

The purpose of the financial assistance provided by the Administration for Native Americans (ANA) under the Native American Programs Act (the Act) is to promote social and economic self-sufficiency for American Indians, Alaskan Natives, Native Hawaiians and Native American Pacific Islanders.

ANA bases its program and policy initiatives on three program goals: governance, economic development and social development. To accomplish these goals, ANA supports tribal governments and other Native American organizations in the development and implementation of community-based, long-term governance and social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities.

B. Proposed Project To Be Funded

The Native Hawaiian Revolving Loan Fund Demonstration Project is authorized by recent amendments to the Act as a 5-year demonstration project to promote economic development for Native Hawaiians and financed through appropriations contained in the Fiscal Year 1988 Continuing Resolution. Under these provisions, either an agency of the State of Hawaii or a community-based Native Hawaiian organization whose purpose is the economic and social self-sufficiency of Native Hawaiians will be awarded one grant to establish and administer a revolving loan fund for Native Hawaiian organizations, businesses, and individual Native Hawaiians.

ANA's financial assistance for Native Hawaiians to date has been in the form of grants to a broad range of Native Hawaiian groups. The purpose of this demonstration project is to determine whether Native Hawaiians can benefit from additional community-based assistance for business development in the form of a revolving loan fund.

Applicants are encouraged to read carefully the regulations at 45 CFR Part 1336, Subpart F, which define the Department's requirements for the development and management of the Revolving Loan Fund. A grant application must reflect the loan fund requirements as specified in the regulations.

As stated in section 803A, the five-year demonstration project period will run from November 29, 1987 (the date of enactment of the legislation) to November 29, 1992. ANA expects the grant to be awarded to administer the Revolving Loan Fund project by September 30, 1988. Therefore, the prospective grantee must be prepared to use the amount of the Fiscal Year 1988 appropriation to operate a Revolving Loan Fund from October 1, 1988 to November 29, 1992. From that point in time, the Loan Administrator will assume responsibility for the collection of any loans outstanding up to an additional five years until September 30, 1997 or until all outstanding loans are settled. The fiscal requirements of the

Revolving Loan Fund are addressed in § 1336.72 of the regulations.

Of key importance is the requirement that the Loan Administrator assume responsibility for the collection of loans outstanding after the end of the 5-year demonstration project without additional financial assistance from ANA. The costs for managing the collection process after the 5-year period will be determined by the Commissioner of ANA based on audits and financial reports and will be paid from interest and loan charges collected by the fund and that are in the fund as of November 29, 1992. Therefore, the grant application must address the management of the fund beyond the 5-year period of the demonstration project.

An applicant for this grant must submit an application for a fifty-month project period. There will be three budget periods of 12 months each and a fourth budget period of 14 months. The application must fully describe project objectives and activities for each budget period. Separate Objective Work Plans must be presented for each of the budget periods which must include a separate itemized budget of the Federal and non-Federal costs of the project.

ANA estimates that the first six months of the grant period will be devoted to the development of the goals, strategies, procedures and criteria outlined in §§ 1336.63-1336.72 of the regulations. Before any direct loan may be made by the Loan Administrator, ANA must approve the operating plan for the Revolving Loan Fund.

ANA is looking for a State agency or an organization already established in the Native Hawaiian community to administer the RLF. It is important that the Loan Administrator have contacts in the community with other financial institutions as well as with local Native Hawaiian businesses.

ANA is seeking to fund a Loan Administrator which can provide a match of cash or in-kind contributions. While the statute provides that administrative costs may be paid from the Revolving Loan Fund, the maximum match of a non-Federal share will increase the amount of loan monies available for the business community and will be taken into consideration by the Commissioner in making his final funding decision.

This Program Announcement solicits applications under the interim final regulations. If, as a result of public comments on the regulations, the Department makes changes in the requirements for the Loan Administrator, each applicant will be

offered an opportunity to amend its application.

C. Eligible Applicants

Agencies of the State of Hawaii or community-based Native Hawaiian organizations whose purpose is the economic and social self-sufficiency of Native Hawaiians are eligible to apply for a grant award under this announcement.

D. Available Funds

In Fiscal Year 1988 \$957,000 is available for one grant under this announcement.

E. Grantee Share of Project

The authorizing statute (Section 803(b)) requires that the grantee match 20% of the total approved project. An itemized budget detailing the applicant's non-Federal share and its source must be included in the application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

F. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

G. The Application Process

Availability of Application Forms

In order to be considered for the grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application requirements are approved under OMB Control No. 0980-0016. The application kits containing the necessary forms may be obtained from:

Darryl Summers (202) 245-7730 or Jan Phalen (202) 245-7714, Administration for Native Americans, Office of Human Development Services, DHHS, Room 5300 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201-0001, Attention: No. 13612-883.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be hand delivered or mailed to:

Department of Health and Human Services, Office of Human Development Services, Discretionary Grants Management Branch, Hubert H. Humphrey Building, Room 345F, 200 Independence Avenue, SW., Washington, DC 20201-0001, Attention: ANA 13612-883.

The application shall be signed by an individual authorized to act for the applicant and to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.

- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel evaluates each application against the published criteria. The results of this review assist the Commissioner in making final funding decisions.

- The Commissioner's decision also takes into account the comments of the ANA staff, State and Federal agencies having performance related information, and other interested parties.

- The Commissioner will make one grant award consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this Program Announcement, and the availability of funds.

- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. The successful applicant is notified through an official Financial Assistance Award (FAA). The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of any non-Federal matching share.

H. Review Process and Criteria

Applications submitted in a timely manner under this program announcement will undergo a pre-review to determine:

- That the applicant is eligible in accordance with the Eligible Applicant Section of this announcement;
- That the application proposes project objectives which are responsive to the Program Announcement; and

- That the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. All required materials and forms are listed in the Grant Application Checklist in the Application Kit.

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the following criteria:

(1) Goals of the Revolving Loan Fund Demonstration Project (5 points)

The application presents the goals of the Revolving Loan Fund in accordance with Subpart F of the ANA regulations.

(2) Resources Available to the Revolving Loan Fund Demonstration Project (20 points)

Other resources which will assist or be coordinated with the Revolving Loan Fund are described indicating that the applicant has sufficient support to administer the Revolving Loan Fund. Resources include Federal resources and any non-Federal match.

(3) Capabilities and Qualifications (30 points)

The resumes or position descriptions of key personnel of the Board, Loan Review Committee and staff (Section 1336.65 of the Interim Final Rule) indicate that the personnel are qualified to administer a Revolving Loan Fund. Personnel qualifications include expertise in all aspects necessary to a financial lending institution, including business development, business technical assistance, financing experience, appropriate legal experience, investment expertise, etc.

(4) Project Objectives and Activities of the Demonstration Project (30 points)

The applicant proposes objectives and activities which:

- Are in response to the regulations of the Revolving Loan Fund;
- Specify how the Loan Administrator will develop and obtain ANA approval for the operating procedures of the Revolving Loan Fund;
- Are realistic and measurable; and
- Indicate which staff person will have responsibility for each activity and objective.

(5) Results or Benefits Expected (5 points)

The proposed objectives will result in specific outcomes which in total will result in a successful Revolving Loan Fund.

(6) Budget (10 points)

The budget fully explains and justifies the line items in the budget categories in Part III, Section B of the Budget Information of the Application. Sufficient detail is included to facilitate determination of allowability, relevance to the project, and cost benefits. The administrative costs which are to be paid from the Revolving Loan Fund are the minimum necessary to assure program operations.

I. Technical Guidance

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- ANA suggests that the pages of the application be numbered sequentially from the first page. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.
- Two copies of the application plus the original are required.
- ANA will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

- The Cover Page (included in the Kit) should be the first page of an application.

- The Approach Page (Section B, Part IV) for each objective proposed should be of sufficient detail to become a daily or weekly staff guide of responsibilities should the applicant be funded.

- The applicant should specify the entire project period length on the cover page of the Form 424, Block 16, not the length of the first budget period.

J. Due Date For Receipt of Applications

The closing date for applications submitted in response to this program announcement is August 23, 1988.

K. Receipt of Applications

Applications must either be hand delivered or mailed.

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting the deadline if they are:

- (1) Received on or before the deadline date at the address specified in the Application Submission Section; or
 - (2) Sent on or before the deadline date and received by the granting agency in time for the independent review.
- (Applicants must be cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from

the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria in the above paragraph of this section are considered late applications. ANA shall notify each late applicant that its application will not be considered in the competition.

Extension of Deadlines

ANA may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Date: May 18, 1988.

William Lynn Engles,
Commissioner, Administration for Native Americans.

Approved: May 25, 1988.

Sydney Olson,
Assistant Secretary for Human Development Services.

[FR Doc. 88-14297 Filed 6-23-88; 8:45 am]

BILLING CODE 4130-01-M

Estimate Report

Friday
June 24, 1988

Part VII

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled
Hazardous Waste Sites; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3404-1]

National Priorities List for Uncontrolled Hazardous Waste Sites, Sites Subject to the Subtitle C Corrective Action Authorities of the Resource Conservation and Recovery Act

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency ("EPA") is reproposing 13 sites that were previously proposed for the National Priorities List ("NPL") and proposing to drop 30 sites from the proposed NPL. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), and Executive Order 12580.

These actions are being proposed for these sites in accordance with the NPL policy concerning sites subject to the Subtitle C corrective action authorities of the Resource Conservation and Recovery Act ("RCRA"), set out at 51 FR 21057 (June 10, 1986), and in the preamble to this proposed rule. This notice solicits comments on the Agency's decisions to either promulgate, or drop from the proposed NPL, certain sites based upon their RCRA status.

DATE: Comments may be submitted on or before August 23, 1988.

ADDRESSES: Comments may be mailed to Stephen A. Lingle, Director, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (WH-548A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Addresses for the Headquarters and Regional dockets are provided below. For further details on what these dockets contain, see Section III of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall Subbasement, 401 M Street SW., Washington, DC 20460, 202/382-3046

Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-

CAN 6, 90 Canal Street, Boston, MA 02203, 617/573-5729

U.S. EPA Region 2, Document Control Center, Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano, 212/264-5540, Ophelia Brown, 212/264-1154

Diane McCreary, Region 3, U.S. EPA Library, 5th Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-0580

Gayle Alston, Region 4, U.S. EPA Library, Room G-6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347-4216

Cathy K. Freeman, Region 5, U.S. EPA, 5HR-11, 230 South Dearborn Street, Chicago, IL 60604, 312/886-6214

Deborah Vaughn-Wright, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-ES, Dallas, TX 75202-2733, 214/655-6740

Connie McKenzie, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/236-2828

Delores Eddy, Region 8, U.S. EPA Library, 999 18th Street, Suite 500, Denver, CO 80202-2405, 303/293-1444

Linda Sunnen, Region 9, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8082

David Bennett, Region 10, U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop 525, Seattle, WA 98101, 206/442-2103.

FOR FURTHER INFORMATION CONTACT:

Suzanne Wells, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (WH-548A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone (800) 424-9346 or 382-3000 in the Washington, DC metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. NPL Update Process
- III. Public Comment Period, Available Information
- IV. Eligibility and Listing Policies
- V. Contents of This Proposed Rule
- VI. Regulatory Impact Analysis
- VII. Regulatory Flexibility Act Analysis

I. Introduction

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, *et seq.* ("CERCLA" or "the Act") in response to the dangers of uncontrolled hazardous waste sites; CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act ("SARA"). To implement CERCLA, the U.S. Environmental Protection Agency ("EPA") promulgated the revised

National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to section 105 of CERCLA and Executive Order 12316 (46 FR 42237, August 20, 1981). The National Contingency Plan ("NCP"), further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants.

Section 105(a)(8)(A) of CERCLA (as amended) requires that the NCP include criteria for determining priorities among releases or threatened releases for the purpose of taking remedial or removal action. Removal action involves cleanup or other actions that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial actions tend to be long-term in nature and involve response actions that are consistent with a permanent remedy (CERCLA section 101(24)).

Section 105(a)(8)(B) of CERCLA (as amended) requires that these criteria be used to prepare a list of national priorities among the known releases throughout the United States. These criteria are included in Appendix A of the NCP, *Uncontrolled Hazardous Waste Site Ranking System: A User's Manual* (the "Hazard Ranking System" or "HRS" (47 FR 31219, July 16, 1982)). The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). Section 105(a)(8)(B) also requires that the NPL be revised at least annually. EPA proposes to include on the NPL sites at which there have been releases or threatened releases of hazardous substances, or of "pollutants or contaminants." The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

Under § 300.68(a) of the NCP, a site must be on the NPL if a remedial action is to be financed by the Hazardous Substances Superfund established under SARA. Federal facility sites are eligible for the NPL pursuant to § 300.66(e)(2) of the NCP (50 FR 47931, November 20, 1985). However, CERCLA section 111(e), as amended by SARA, limits the expenditure of Fund monies at Federally-owned facilities. Federal facility sites are subject to the requirements of section 120 of CERCLA, as amended by SARA.

In this notice, EPA is reproposing 13 sites to the NPL, and proposing to drop 30 sites from the proposed NPL. These sites were proposed in either Update #1

(48 FR 40674, September 8, 1983), Update #2 (49 FR 40320, October 15, 1984), Update #3 (50 FR 14115, April 10, 1985), or Update #4 (50 FR 37950, September 18, 1985). These sites were all proposed prior to publication of the policy for listing certain categories of RCRA sites on the NPL (announced on June 10, 1986 (50 FR 21054) and amended in the preamble to this proposed rule), and have since been identified as sites which may be regulated according to the Subtitle C corrective action authorities of RCRA. Therefore, no opportunity has been provided for notice and comment on the application of the final RCRA listing criteria to these sites. In addition, one site, the J. H. Baxter Co. site in Weed, California, is being repropounded because of its RCRA status and because the HRS score for the site has been revised. In addition, minor modifications have been made to the HRS documents for the sites listed below:

Lorentz Barrel & Drum—San Jose, California
 Prestolite Battery Division—Vincennes, Indiana
 Union Chemical Co.—South Hope, Maine
 Kysor Industrial Corp.—Cadillac, Michigan
 Conservation Chemical Co.—Kansas City, Missouri
 National Starch and Chemical Corp.—Salisbury, North Carolina
 Culpeper Wood Preservers—Culpeper, Virginia

The purpose of this **Federal Register** notice is to provide information and solicit comments on EPA's proposed actions for these sites, and to set out amendments to the June 10, 1986 listing policy.

Currently, 378 sites are proposed for the NPL and 799 sites are on the final NPL for a total of 1177 sites. However, the number may change in the future as a result of final actions resulting from this proposed rule.

II. NPL Update Process

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS takes into account "pathways" to human or environmental exposure in terms of numerical scores. Those sites that score 28.50 or greater on the HRS, and which are otherwise eligible, may be proposed for listing. The sites discussed in today's rule were proposed based on HRS scores greater than 28.50.

SARA, enacted on October 17, 1986, directs EPA to revise the HRS. The Agency will continue to use the existing HRS until the revised HRS becomes

effective. Sites placed on the final NPL prior to the effective date of the revised HRS will not be re-evaluated under the revised system, consistent with section 105(c)(3) of CERCLA (as amended).

The second mechanism for placing sites on the NPL allows States to designate a single site, regardless of its score, as the State's top priority. A State top priority site will be listed on the NPL even if it does not qualify due to its score.

In rare instances, EPA may utilize § 300.66(b)(4) of the NCP (50 FR 37624, September 16, 1985), which allows certain sites with HRS scores below 28.50 to be eligible for the NPL. These sites may qualify for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services has issued a health advisory which recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

States have the primary responsibility for identifying sites, computing HRS scores, and submitting candidate sites to the EPA Regional offices. EPA Regional offices conduct a quality control review of the States' candidate sites, and may assist in investigating, monitoring, and scoring sites. Regional offices may consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the new sites that meet the listing requirements and solicits public comments on the proposal. Based on these comments and further EPA review, the Agency determines final scores and promulgates those sites that still meet the listing requirements.

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has since been expanded (see 49 FR 19480, May 8, 1984; 49 FR 37070, September 21, 1984; 50 FR 6320, February 14, 1985; 50 FR 37630, September 16, 1985; 51 FR 21054, June 10, 1986; and 52 FR 27620, July 22, 1987). To date, EPA has deleted 11 sites from the NPL (51 FR 7935, March 7, 1986; 53 FR 12680, April 18, 1988). As of today, the number of final NPL sites is 799.

Another 378 sites from seven updates remain proposed for the NPL (see 48 FR 40674, September 8, 1983; 49 FR 40320, October 15, 1984; 50 FR 14115, April 10,

1985; 50 FR 37950, September 18, 1985; 51 FR 21099, June 10, 1986; 52 FR 2492, January 22, 1987; and a notice published elsewhere in today's **Federal Register**).

III. Public Comment Period, Available Information

This **Federal Register** notice, which repropounds 13 sites to the NPL and proposes to drop 30 sites from the proposed NPL, opens the formal 60-day comment period. These sites were all proposed in one of the first four updates to the NPL (Update #1, 48 FR 40674, September 8, 1983; Update #2, 49 FR 40320, October 15, 1984; Update #3, 50 FR 14115, April 10, 1985; or Update #4, 50 FR 37950, September 18, 1985). The Agency is soliciting comment on the application of the policy for listing certain categories of RCRA sites on the NPL, discussed on June 10, 1986 (51 FR 21099), and later in this rule, to these proposed NPL sites. Comment is also being solicited on the revision of the HRS score for the J.H. Baxter site. In addition, as previously mentioned, minor modifications have been made to the HRS documents for several other sites. Comments may be mailed to Stephen A. Lingle, Director, Hazardous Site Evaluation Division (Attn: NPL Staff), Office of Emergency and Remedial Response (WH-548A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Documents providing EPA's justification for today's proposed actions are available to the public in both the Headquarters and appropriate Regional public dockets. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents. The Headquarters public docket is located in EPA Headquarters, Waterside Mall Subbasement, 401 M Street SW., Washington, DC 20460, and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. The Regional public dockets are identified in the Address portion of this notice.

Comments are placed in the Headquarters docket and, during the comment period, are available to the public only in the Headquarters docket. A complete set of comments pertaining to sites in a particular EPA Region will be available for viewing in the Regional office docket approximately one week after the close of the comment period. Comments received after the close of the comment period will be available in the Headquarters docket and in the appropriate Regional office docket on an "as received" basis.

EPA considers all comments received during the formal comment period. In past NPL rulemakings, EPA has considered comments received after the close of the comment period. EPA will attempt to continue that practice to the extent that is practicable. The Agency is currently working to revise the HRS pursuant to requirements in SARA. EPA anticipates making final decisions on the 43 sites in this rule prior to the effective date of the revised HRS. Because of this time constraint, EPA may not have the opportunity to consider late comments as in the past. Any sites still proposed as of the effective date of the HRS will have to be re-evaluated using the revised HRS.

A statement of EPA's information release policy, describing what information the Agency discloses in response to Freedom of Information Act requests from the public, was published on February 25, 1987 (52 FR 5578).

IV. Eligibility and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants and expressly excludes some substances, such as petroleum, from its response authority. In addition, as a matter of policy, EPA may choose not to respond to certain types of releases because other authorities can be used to achieve cleanup. Where such other authorities exist and the Federal government can undertake or enforce cleanup pursuant to a particular established program, using the NPL to determine the priority or need for review under CERCLA may not be appropriate. If, however, the Agency later determines that sites not listed as a matter of policy are not being or cannot be addressed in an adequate or timely manner, the Agency may consider placing them on the NPL.

The listing policy of relevance to this proposed rule pertains to sites which may be subject to the corrective action authorities of Subtitle C of the Resource Conservation and Recovery Act (RCRA).

NPL Listing/Deferral of RCRA Sites

Background

Since the first NPL final rule (48 FR 40658, September 8, 1983), the Agency's policy has been to defer placing sites on the NPL that could be addressed by the RCRA Subtitle C corrective action authorities. Until 1984, those authorities were limited to facilities with releases to ground water from surface impoundments, waste piles, and treatment areas, and landfills that received RCRA hazardous waste after

July 26, 1982, and did not certify closure prior to January 26, 1983 (i.e., land disposal facilities addressable by an operating or post-closure permit). Sites which met these criteria were placed on the NPL only if they were abandoned, lacked sufficient resources, Subtitle C corrective action authorities could not be enforced, or a significant portion of the release came from non-regulated units.

On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted. HSWA greatly expanded RCRA Subtitle C corrective action authorities as follows:

- Section 3004(u) requires permits issued after the enactment of HSWA to include corrective action for all releases of hazardous waste or constituents from solid waste management units at a treatment, storage, or disposal facility seeking a permit.
- Section 3004(v) requires corrective action to be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner/operator of the facility demonstrates that despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action.
- Section 3008(h) authorizes the Administrator of EPA to issue an order requiring corrective action or such other response measures as deemed necessary to protect human health or the environment whenever it is determined that there is or has been a release of hazardous waste into the environment from a facility with interim status.

As a result of the broadened Subtitle C corrective action authorities of HSWA, the Agency announced a policy for deferring the listing of non-Federal sites subject to the Subtitle C corrective action authorities (50 FR 14117, April 10, 1985). The policy proposed to defer listing of such sites unless and until the Agency determined that RCRA corrective action was not likely to succeed or occur promptly due to factors such as:

- (1) The inability or unwillingness of the owner-operator to pay for addressing the contamination at the site;
- (2) Inadequate financial responsibility guarantees to pay for such costs; and
- (3) EPA or State priorities for addressing RCRA sites.

The intent of the policy was to maximize the number of site responses achieved through the RCRA corrective action authorities, thus preserving the CERCLA Fund for sites for which no other authority is available. Federal facility sites were not considered in the development of the policy at that time because the NCP prohibited placing Federal facility sites on the NPL.

On June 10, 1986 (51 FR 21057), the Agency added to the NPL a number of sites regulated under RCRA, but not subject to the Subtitle C corrective action authorities. Examples included:

- Facilities that ceased treating, storing, or disposing hazardous waste prior to November 19, 1980 (the effective date of Phase I of the RCRA regulations), and to which the RCRA corrective action or other authorities of Subtitle C cannot be applied.
- Sites at which only materials exempted from the statutory or regulatory definition of solid or hazardous waste were managed.
- RCRA hazardous waste handlers to which RCRA Subtitle C corrective action authorities do not apply, such as hazardous waste generators or transporters not required to have interim status or a final RCRA permit.

In the June 10, 1986 notice, the Agency also added to the NPL a number of sites which were subject to Subtitle C corrective action authorities. After having reviewed public comments received on the April 10, 1985 policy, the Agency determined that sites which are subject to Subtitle C corrective action authorities should be on the NPL if they are eligible (e.g., HRS scores greater than or equal to 28.50) and if the owner/operators are either unable or unwilling to pay for corrective action at the sites. The Agency recognized that in such a situation it may be appropriate to place the sites on the NPL to make CERCLA funds available for the site, if needed.

Specifically, the Agency identified three categories of sites subject to Subtitle C corrective action authorities which could be placed on the NPL. These categories were consistent with the first two factors announced in the April 10, 1985 policy. The three categories are as follows:

(1) Facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws.

(2) Facilities that have lost authorization to operate and for which there are indications that the owner/operator has been unwilling to undertake corrective action. Authorization to operate may be lost when issuance of a corrective action order under RCRA section 3008(h) terminates the interim status of a facility or when the interim status of the facility is terminated as a result of a permit denial under RCRA section 3005(c). Also, authorization to operate is lost through operation of section 3005(e)(2) (when an owner/operator of a land disposal facility did not certify compliance with applicable ground water monitoring and financial responsibility requirements and submit

a Part B permit application by November 8, 1985—also known in HSWA as the Loss of Interim Status Provision (LOIS)).

(3) Facilities that have not lost authorization to operate, but which have a clear history of unwillingness. These situations are determined on a case-by-case basis.

Also, on June 10, 1986 (51 FR 21059), the Agency discussed additional components of the RCRA policy to add specificity to the determination of unwillingness. The Agency's decision on these additional components will be discussed in an upcoming **Federal Register** notice.

Additional Clarification of the NPL/RCRA Policy

Currently, the Agency will place sites subject to RCRA Subtitle C corrective action on the NPL only if they satisfy one of the three criteria discussed previously in this rule (i.e., bankruptcy, LOIS/unwillingness, case-by-case unwillingness). In addition, today's notice amends the RCRA policy by adding four new categories of RCRA sites as appropriate for the NPL. EPA has decided that sites in the following category are appropriate for the NPL.

(1) Facilities that were treating, storing or disposing of Subtitle C hazardous waste after November 19, 1980, and did not file a Part A permit application by that date and have little or no history of compliance with RCRA. These are referred to as *non- or late filers*.

The Agency has decided to place on the NPL "non- or late filers," facilities that were treating, storing, or disposing of hazardous waste after November 19, 1980, but did not file a Part A permit application by that date and have little or no history of compliance with RCRA. EPA has found that TSDFs that fail to file Part A of the RCRA permit application generally remain outside the range of cognizance of authorities responsible for compliance with RCRA, and generally are without the institutional mechanisms such as ground water monitoring programs, necessary to assure prompt compliance with the standards and goals of the RCRA program; therefore, EPA believes that it is not appropriate to defer to RCRA for action at these sites, even though RCRA technically may apply. However, in cases where non- or late filer facilities have in fact come within the RCRA system and demonstrated a history of compliance with RCRA regulations (as may often be the case with late filers), the Agency may decide to defer listing and allow RCRA to continue to address problems at the site.

Two other categories of RCRA sites are appropriate for the NPL:

(2) Facilities with permits for the treatment, storage, or disposal of Subtitle C hazardous waste which were issued prior to the enactment of HSWA, and whose owner/operator will not voluntarily modify the permit to incorporate corrective action requirements. These are referred to as *pre-HSWA permittees*.

(3) Facilities that have filed Part A permit applications for treatment, storage, or disposal of Subtitle C hazardous wastes as a precautionary measure only. These facilities may be generators, transporters, or recyclers of hazardous wastes, and are not subject to Subtitle C corrective action authorities. These are referred to as *protective filers*.

For facilities with permits that pre-date HSWA, the owner/operators are not required through the permit to perform corrective action for releases from solid waste management units, and the Agency does not have the authority to modify such pre-HSWA permits to include RCRA corrective action under RCRA section 3004(u) until the permit is renewed. Because many pre-HSWA permits are for 10 years, with the last pre-HSWA permit having been issued prior to November 8, 1984, it could be 1994 before the Agency could modify some permits to include corrective action authority. Therefore, the Agency will propose for listing, facilities with pre-HSWA permits (that have HRS scores greater than or equal to 28.50, or are otherwise eligible for listing), so that CERCLA authorities will be available to more expeditiously address any releases at such sites. However, if the permitted facility consents to the modification of its pre-HSWA permit to include corrective action requirements, the Agency will consider not adding the facility to the NPL.

The Agency does not have the authority to compel Subtitle C corrective action at facilities classified as protective filers. These facilities filed Part A permit applications as treatment, storage or disposal facilities (TSDFs) as a precautionary measure only, and are generators, transporters, or recyclers of hazardous waste, or in some cases, handlers of non-hazardous wastes. Protective filers are not subject to Subtitle C corrective action authorities, and thus, EPA will propose them for the NPL.

The Agency is also announcing a policy for a fourth category of RCRA sites that may be appropriate for listing on the NPL. This policy will apply to sites re-proposed for listing in today's **Federal Register**, and to sites newly proposed for listing on NPL Update #7, published elsewhere in today's **Federal Register**. This category of sites includes:

(4) Facilities that at one time were treating or storing RCRA Subtitle C hazardous waste but have since converted to generator-only status (i.e., facilities that now store hazardous waste for 90 days or less), or any other hazardous waste activity for which interim status is not required. These facilities, the withdrawal of whose Part A application has been acknowledged by EPA or the State, are referred to as *converters*.

Converters at one time treated or stored Subtitle C hazardous waste and were required to obtain interim status. EPA believes that it has the authority under RCRA section 3008(h) to compel corrective action at such sites. However, RCRA's corrective action program currently focuses primarily on treatment, storage, and disposal facilities (due to statutory permitting deadlines in RCRA), and thus EPA has not routinely reviewed converters under RCRA Subtitle C. The Agency has decided at this time to propose that four sites previously proposed for the NPL be placed on the final NPL on the basis of their converter status, and, in a separate section of today's **Federal Register**, to propose an additional eight converters for listing on the NPL, in order to ensure that these sites are expeditiously addressed.

This is consistent with EPA's approach of listing those RCRA facilities where corrective action is not likely to be expeditiously performed (see 51 FR 21054, June 10, 1986). Although EPA has the authority to list any site not statutorily excluded that meets the HRS scoring criterion, the Agency has, as a matter of policy, decided to defer the listing of most facilities where RCRA corrective action authorities are available. However, the Agency believes that deferral may not be appropriate for facilities like converters where prompt corrective action is unlikely under RCRA; instead, the Agency is proposing to list such sites so that cleanup action may be taken in an expeditious manner under CERCLA, if necessary.

EPA is currently engaged in an initiative to identify and prioritize RCRA facilities that are not being promptly addressed. If the Agency determines in the future that as a result of this initiative, converter sites will be addressed in an expeditious manner by RCRA authorities, then it will reconsider today's policy and may defer to RCRA for corrective action at converter sites.

The Agency seeks comment on the application of this policy to the sites being proposed and re-proposed in today's **Federal Register**. In the future, there may be other situations, on a case-by-case basis, where the Agency may

elect to use CERCLA authorities rather than its RCRA authorities. In those situations, the Agency will provide its rationale for pursuing CERCLA authorities in a Federal Register notice.

V. Contents of This Proposed Rule

This rule repropose 13 sites to the NPL (Table 1), and proposes to drop 30 sites (Table 2) from the proposed NPL. These proposed actions are based on the application of the components of the NPL/RCRA policy announced on June 10, 1986 (51 FR 21057), and on those discussed in this notice.

All these sites were proposed to the NPL prior to the announcement of the NPL/RCRA policy and its amendments today. The Agency believes that it is

appropriate to solicit comments on these proposed actions because the public was not previously afforded adequate notice and opportunity to comment on the application of the NPL/RCRA policy to these sites. Documentation supporting the Agency's proposed actions is available in the public docket.

Sites To Be Reproposed To The NPL

The 13 sites that the Agency is repropose to the NPL fall into one of the following categories:

- Sites which are not subject to the Subtitle C corrective action authorities of RCRA. For example:
 - exempt by site-specific orders
 - sites where wastes are no longer considered hazardous because of an

amendment to the list of RCRA hazardous wastes

- Sites subject to Subtitle C corrective action authorities of RCRA, but which satisfy one of the criteria of the June 10, 1986 NPL/RCRA policy (e.g., case-by-case unwillingness);
- Sites which have converted from treatment and/or storage status to generator-only status;
- Sites which failed to file a Part A permit application in a timely fashion; and
- Sites where RCRA corrective action may not apply to all the contamination at the site.

Table 1 lists the 13 sites the Agency is repropose to the NPL. A brief description of each follows Table 1, and a more detailed account is available in the docket.

TABLE 1.—SITES TO BE REPROPOSED TO THE NPL

State/Site name	Location	RCRA status	Date proposed
AZ: Motorola, Inc. (52nd Street Plant)	Phoenix	Converter	10/15/84
CA: Fairchild Semiconductor Corp. (formerly Fairchild Camera & Instrument Corp.) (South San Jose Plant)	South San Jose	Converter	10/15/84
CA: J.H. Baxter Co.	Weed	Unwilling	10/15/84
CA: Lorentz Barrel & Drum Co.	San Jose	Non-filer	10/15/84
FL: City Industries Inc.	Orlando	LOIS/unwilling	10/15/84
IN: Prestolite Battery Division	Vincennes	RCRA corrective action may not apply to all contamination.	09/18/85
ME: Union Chemical Co. Inc.	South Hope	LOIS/Unwilling	04/10/85
MI: Kysor Industrial Corp.	Cadillac	Converter	09/18/85
MO: Conservation Chemical Co.	Kansas City	Unwilling	04/10/85
NE: Lindsay Manufacturing Co.	Lindsay	Amendment to waste listing	10/15/84
NC: National Starch & Chemical Corp.	Salisbury	Converter	04/10/85
VA: Culpeper Wood Preservers, Inc.	Culpeper	RCRA 3008(a) order	10/15/84
VA: Buckingham County Landfill (formerly Love's Container Service Landfill)	Buckingham	LOIS/unwilling	10/15/84

Motorola, Inc. (52nd Street Plant)—Phoenix, Arizona

This facility is a converter. It obtained interim status on November 19, 1980, when it submitted to EPA a Part A permit application for container and tank storage. On May 19, 1986, the facility requested conversion to generator status only. On July 29, 1986, EPA confirmed the facility was operating as a generator.

Fairchild Semiconductor Corp. (Formerly Fairchild Camera & Instrument Corp.) (South San Jose Plant), South San Jose, California

This facility is a converter. It obtained interim status on November 17, 1980, when it submitted to EPA a Part A permit application for container and tank storage units. On February 11, 1982, the California Department of Health Services completed a surveillance and compliance report indicating the facility should not be permitted as a treatment, storage, or disposal facility, and that the facility should be classified as a generator. On March 10, 1982, the

facility requested to withdraw its permit application for hazardous waste treatment operations because the only type of treatment conducted at the facility was waste water neutralization, which is excluded from permit requirements. EPA granted the request for withdrawal of the permit application.

J.H. Baxter Co.—Weed, California

EPA is repropose this site to the NPL based on criterion #3 of the NPL/RCRA policy and because the HRS score has been revised. Consequently, the Agency is soliciting comment on the revised score as well as application of the NPL/RCRA policy. The facility has not lost authorization to operate, but has a clear history of unwillingness.

Baxter obtained interim status on November 17, 1980, when it submitted to EPA a Part A permit application. Since 1983, it has consistently sought to withdraw that application, and has continued to dispute RCRA jurisdiction over its facility. On the basis of disputed RCRA jurisdiction, the company has been unwilling to deny with numerous

State and EPA Regional demands for cleanup and/or closure under RCRA and other statutes. The company does not comply the presence of contamination of soil and ground water at the site; rather it disputes the applicability of RCRA to those problems.

Baxter has evidenced a clear unwillingness to submit in any way to RCRA authorities, and thus it appears unlikely that corrective action may be achieved under RCRA. Therefore, the site should be repropose to the NPL so that the contamination may be addressed under CERCLA.

Lorentz Barrel & Drum Co.—San Jose, California

This facility is now considered a non-filer. On August 18, 1980, Lorentz, a reconditioner of steel drums, notified EPA that it was a generator and transporter of hazardous waste, as well as a treatment, storage, and disposal facility. On March 25, 1981, EPA deleted the facility as a treatment, storage and disposal facility based on the company's

representations that it had filed the TSD notification as a precaution, believing that ambiguities in the hazardous waste regulations could lead to an interpretation that would include the reconditioning of steel drums.

In 1983, the State determined that the facility was in fact managing hazardous wastes without a permit; the facility has been shut down until compliance procedures are developed. The facility is now considered a non-filer.

City Industries, Inc.—Orlando, Florida

This site is being proposed for the NPL based on criterion #2 of the NPL/RCRA policy. Although this facility is subject to the Subtitle C corrective action authorities of RCRA, it has lost authorization to operate, and the owner/operator has been unwilling to address contamination at the site.

City Industries obtained interim status on November 19, 1980, when it submitted to EPA a Part A permit application for storage. On July 27, 1983, EPA terminated the facility's interim status for failure to submit an acceptable Part B permit application to EPA.

The owner/operator demonstrated an unwillingness to address contamination at the site by failure to submit an acceptable Part B permit application to EPA, failure to comply with Federal and State administrative orders, abandonment of the site, and statements that he was financially unable to address the contamination at the site.

Prestolite Battery Division—Vincennes, Indiana

Prestolite Battery Division received interim status on November 11, 1980, when it submitted to EPA a Part A permit application for container, tank and surface impoundment storage. Much of the contamination at the site is a result of atmospheric deposition of lead from the facility's faulty air pollution control equipment. EPA is proposing to add this site to the NPL because at this time an issue remains as to whether RCRA Subtitle C corrective action authorities apply to all of the contamination associated with the site.

Union Chemical Co., Inc.—South Hope, Maine

This site is being repropounded for the NPL based on criterion #2 of the NPL/RCRA policy. Although this facility is subject to the Subtitle C corrective action authorities of RCRA, it has lost authorization to operate, and the owner/operator has been unwilling to address contamination at the site.

On July 31, 1980, Union Chemical submitted a preliminary notification of

hazardous waste activity to EPA, identifying itself as a generator of RCRA hazardous waste and as a treatment and storage facility. Union Chemical obtained interim status on November 15, 1980, when it submitted a Part A permit application to EPA. The facility's interim status was terminated on June 27, 1984, when the State of Maine found that the facility had failed to comply with a May 7, 1984, consent decree it had entered into with the State. The consent decree required the reduction in the number of drums on site and financial assurances for site closure.

The owner/operator demonstrated unwillingness to address contamination at the site by failure to submit an acceptable Part B permit application, failure to comply with Federal and State administrative orders, and statements that he was financially unable to address contamination at the site.

Kysor Industrial Corp.—Cadillac, Michigan

This facility is a converter. It submitted a notification of hazardous waste activity on August 18, 1980, and obtained interim status on November 19, 1980, when it submitted to EPA a Part A permit application for container storage. On April 24, 1984, the facility submitted a closure plan, certification of closure, and request for conversion to generator status. On July 20, 1984, EPA approved Kysor's closure plan and acknowledged the facility's small quantity generator status.

Conservation Chemical Co. (CCC)—Kansas City, Missouri

EPA is repropounding this site for the NPL based upon criterion #3 of the NPL/RCRA policy. The facility has not lost authorization to operate, but has a clear history of unwillingness.

The record of compliance at the CCC site demonstrates the unwillingness of the owner/operator to submit an adequate part B permit application or closure plan; to comply with Federal and State Administrative orders; and to take cleanup action in response to a court finding of a "imminent and substantial" hazard at the site.

A consent decree signed by the generator defendants and the site owner/operator has recently been approved by a U.S. district court. However, the decree merely requires the site owner/operator to pay certain monies for past EPA response costs, grant site access, and otherwise cooperate in the cleanup efforts to be performed by others at the site. CCC did not commit to do any portion of the site remedy.

Lindsay Manufacturing Co.—Lindsay, Nebraska

This facility is no longer subject to RCRA Subtitle C corrective action authorities. It obtained interim status on November 17, 1980, when it submitted a Part A permit application to EPA for disposal surface impoundment units. On May 28, 1986, (51 FR 19320), EPA published an amendment to the listing for spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K062). This rulemaking confirmed that the waste generated by Lindsay Manufacturing would be considered hazardous only if it exhibited one or more of the hazardous waste characteristics. The waste did not display corrosivity characteristics; the Lindsay manufacturing unit was therefore not subject to RCRA, and not subject to RCRA Subtitle C corrective action authorities.

National Starch & Chemical Corp.—Salisbury, North Carolina

This facility is a converter. National Starch and Chemical Corp. submitted a Notification of Hazardous Waste Activity on September 24, 1980, indicating that the facility was a treatment, storage, or disposal facility as well as a generator. On October 17, 1980, the facility filed a Part A permit application for treating and storing of hazardous waste. On May 20, 1982, National Starch asked to withdraw its Part A application. On June 17, 1982, the facility was deleted as a storage facility and converted to generator only status. On July 19, 1983, EPA deleted the facility as a generator; it now has non-handler status. In 1983, National Starch merged with the adjacent Proctor Chemical facility under the National Starch & Chemical Corp. name and identification number. Proctor submitted a Notification of Hazardous Waste Activity and on August 18, 1980, submitted to EPA a Part A permit application for treatment and storage units. On June 23, 1983, EPA deleted the facility as a storer and on November 14, 1983, it was deleted as a treater, leaving the site with generator status.

Culpeper Wood Preservers, Inc.—Culpeper, Virginia

On September 10, 1981, EPA and the facility entered into a consent order and consent agreement pursuant to RCRA section 3008(a) which stated that upon satisfactory completion of a facility upgrading program, the facility would not be required to have a RCRA permit. The facility satisfied the requirements of the agreement, and thus has not been required to obtain a permit or interim

status under RCRA Subtitle C. As a result, EPA is proposing to list this facility for attention under CERCLA rather than RCRA. However, if the facility agrees to address the contamination at the site according to the Subtitle C corrective action authorities of RCRA, the Agency would consider removing the facility from consideration for the NPL.

Buckingham County Landfill (Formerly Love's Container Service Landfill)—Buckingham, Virginia

This site is being repropoed for the NPL based on criterion #2 of the NPL/RCRA policy. Although this facility is subject to the Subtitle C corrective action authorities of RCRA, it has lost authorization to operate, and the owner/operator has been unwilling to address all of the contamination at the site.

On January 8, 1981, the Love's Container Service Landfill obtained interim status for the disposal of type

DOO1 wastes (ignitable waste) pursuant to RCRA Section 3005. Records indicate that the landfill continued to accept waste until February 1982.

In April 1982, Buckingham County purchased the site and the hazardous waste disposal permit from the site owner, Mr. Love. The landfill was never operate by the county.

In February 1985, the landfill was closed as a solid waste disposal facility by the county. The closure was consistent with State regulations, but was inconsistent with RCRA Subtitle C requirements.

On November 8, 1985, the landfill lost its interim status under RCRA section 3005(e)(2) because the county had failed to submit a Part B permit application for post-closure monitoring, and did not certify compliance with applicable ground water monitoring and financial responsibility requirements.

In a letter to EPA, dated November 30, 1987, from the county, the county stated that it was unable and unwilling to address all of the contamination at the site.

Sites To Be Dropped From the NPL

The Agency is proposing to drop 30 sites (Table 2) from the proposed NPL because they are subject to the Subtitle C corrective action authorities of RCRA, and do not satisfy any of the criteria in the NPL/RCRA policy of June 10, 1986 (51 FR 21057) or those discussed in this notice. The Agency believes that the sites will be adequately addressed using the corrective action authorities of RCRA Subtitle C alone or in conjunction with other authorities (a more detailed description of each site is available in the public docket). The Agency will continue to examine these sites in the context of the NPL/RCRA policy and may, in the future, consider these sites for addition to the NPL, if necessary.

TABLE 2.—SITES PROPOSED TO BE DROPPED FROM THE NPL

State/Site name	Location	Date proposed
CA: Fairchild Semiconductor Corp. (formerly Fairchild Camera & Instrument Corp.) (Mountain View Plant)	Mountain View	10/15/84
CA: FMC Corp. (Fresno Plant)	Fresno	10/15/84
CA: Hewlett-Packard	Palo Alto	10/15/84
CA: IBM Corp. (San Jose Plant)	San Jose	10/15/84
CA: Marley Cooling Tower Co.	Stockton	10/15/84
CA: Rhone-Poulenc, Inc./Zoecon Corp.	East Palo Alto	10/15/84
CA: Signetics, Inc.	Sunnyvale	10/15/84
CA: Southern Pacific Transportation Co.	Roseville	10/15/84
CA: Van Waters & Rogers Inc.	San Jose	10/15/84
CO: Martin Marietta (Denver Aerospace)	Waterton	09/18/85
FL: Pratt & Whitney Aircraft/United Technologies Corp.	West Palm Beach	09/18/85
GA: Olin Corp. (Areas 1, 2 & 4)	Augusta	09/08/83
IA: A.Y. McDonald Industries, Inc.	Dubuque	09/18/85
IA: Chemplex Co.	Clinton/Camanche	10/15/84
IA: Frit Industries (Humboldt Plant)	Humboldt	04/10/85
IA: John Deere (Dubuque Works)	Dubuque	09/18/85
IA: U.S. Nameplate Co.	Mount Vernon	10/15/84
IL: Sheffield (U.S. Ecology, Inc.)	Sheffield	10/15/84
IN: Firestone Industrial Products Co.	Noblesville	09/18/85
KS: National Industrial Environmental Services	Furley	10/15/84
MI: Hooker (Montague Plant)	Montague	09/18/85
MI: Lacks Industries, Inc.	Grand Rapids	10/15/84
MO: Findett Corp.	St. Charles	10/15/84
MT: Burlington Northern Railroad (Somers Tie-Treating Plant)	Somers	10/15/84
NE: Monroe Auto Equipment Co.	Cozad	09/18/85
NJ: Matlack, Inc.	Woolwich Township	09/18/85
OH: General Electric Co. (Coshocton Plant)	Coshocton	10/15/84
PA: Rohm & Haas Co. Landfill	Bristol Township	04/10/85
VA: IBM Corp. (Manassas Plant Spill)	Manassas	10/15/84
WV: Mobay Chemical Corp. (New Martinsville Plant)	New Martinsville	10/15/84

VI. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's

proposal to add new sites. EPA believes that the kinds of economic effects associated with this revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when the amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The

Agency believes that the anticipated economic effects related to proposing the addition of these sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. As required by Executive Order No. 12291, this rule was submitted to the Office of Management and Budget (OMB) for review.

Costs

EPA has determined that this proposed rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. In addition, since these sites were previously proposed for the NPL, no additional costs are incurred in today's rulemaking.

The major events that generally follow the proposed listing of a site on the NPL are a search for responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS. It should be noted that a site must be on the final NPL in order for construction and operation and maintenance (O&M) to occur. O&M activities may continue after construction has been completed.

Costs associated with responsible party searches are initially borne by EPA. Responsible parties may bear some or all the costs of the RI/FS, design and construction, and O&M, or the costs may be shared by EPA and the States.

The State cost share for cleanup activities has been amended by section 104 of SARA. For privately-owned sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. At publicly-owned but not publicly-operated sites, however, the States cost share is at least 50% of all response costs. This includes the RI/FS, remedial design and construction, and O&M. For cleanup activities other than ground water or surface water, EPA will share, for up to 1 year, in the cost of that portion of O&M that is necessary to assure that a remedy is operational and functional. After that time, the State assumes full responsibility for O&M. SARA provides that EPA will share in the operational costs associated with ground water/surface water restoration for up to 10 years.

In previous NPL rulemakings, the Agency has provided estimates of the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average persite

and total cost basis. At this time, however, there is insufficient information to determine what these costs will be as a result of the new requirements under SARA. As EPA gains more experience with the effects that SARA requirements will have on response costs, EPA will once again provide cost estimates.

Listing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the site voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of response costs, but the Agency considers: The volume and nature of the wastes at the site, the parties' ability to pay, and other factors when deciding whether and how to proceed against potentially responsible parties.

The economic effects of this proposed amendment are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this revision on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The benefits associated with today's proposed amendment to place 13 additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, this proposed expansion of the NPL could accelerate voluntary privately-financed cleanup efforts to avoid potential adverse publicity, private lawsuits, and/or Federal or State enforcement actions.

As a result of additional CERCLA remedies, there will be lower human exposure to contaminants, and higher quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these particular sites.

Associated with the costs of remedial actions are significant potential benefits and cost offsets. The distributional costs

to firms of financing NPL remedies have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly.

The benefit associated with today's proposed action to remove 30 sites from the proposed NPL is that CERCLA resources and monies available for cleanup of NPL sites will be preserved for sites for which there is no other authority to pursue site cleanup. The Agency believes that these sites can be addressed by the Subtitle C corrective action authorities of RCRA alone or in conjunction with other authorities, and therefore should not be on the NPL.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small governmental jurisdictions, and nonprofit organizations.

While proposed modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. Proposing sites for the NPL does not in itself require any action by any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. A site's proposed inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected businesses at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the proposed listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including the firm's contribution to the problem and the firm's ability to pay. The impacts from cost recovery on small governments and nonprofit

organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste

treatment and disposal, Water pollution control, Water supply.

Date: June 16, 1988.

Jack W. McGraw,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

It is proposed to amend 40 CFR Part 300, Appendix B, as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300, Appendix B, is revised to read as follows:

Authority: 42 U.S.C. 9605(a)(8)(B).

2. It is proposed to add the following sites, by group, to Appendix B of Part 300:

NATIONAL PRIORITIES LIST, RCRA SITES TO BE REPROPOSED TO THE NPL (BY GROUP), MAY 1988

NPL Gr ¹	St	Site name	City/County	Response category ²	Cleanup status ³
5	NE	Lindsay Manufacturing Co.....	Lindsay.....	V, S	O
6	VA	Culpeper Wood Preservers, Inc.....	Culpeper.....	V, H	
8	AZ	Motorola, Inc. (52nd Street Plant).....	Phoenix.....	D	O
8	VA	Buckingham County Landfill.....	Buckingham.....	D	
9	CA	Fairchild Semiconductor (S San Jose).....	South San Jose.....	D	
10	IN	Prestolite Battery Division.....	Vincennes.....	D	
11	CA	J.H. Baxter & Co.....	Weed.....		
12	CA	Lorentz Barrel & Drum Co.....	San Jose.....	R, S	O
12	MI	Kysor Industrial Corp.....	Cadillac.....	R	
13	ME	Union Chemical Co., Inc.....	South Hope.....	V, R, F, S	O
14	FL	City Industries, Inc.....	Orlando.....	R, F, S	O
14	NC	National Starch & Chemical Co.....	Salisbury.....	D	O
15	MO	Conservation Chemical Co.....	Kansas City.....	R, F	

Number of Sites Proposed for Listing: 13

1: Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

2: V—Voluntary or negotiated response; F—Federal enforcement; D—Category to be determined; R—Federal and State response; S—State enforcement.

3: I—Implementation activity underway, one or more operable units; O—One or more operable units completed; others may be underway; C—Implementation activity completed for all operable units.

[FR Doc. 88-14295 Filed 6-23-88; 8:45 am]

BILLING CODE 6560-50-M